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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
---  
WANDA JAMES SPEIGHT : CIVIL ACTION  
vs. :  
CAPMARK FINANCE, INC. : NO. 07-0890  
WILLIAM F. ALDINGER, III :

PHILADELPHIA, PENNSYLVANIA

February 25, 2009

BEFORE HONORABLE J. CURTIS JOYNER, J.

And a Jury

APPEARANCES:

FOR THE PLAINTIFF: SALMANSON GOLDSHAW, P.C.  
BY: MICHAEL SALMANSON, ESQUIRE  
1500 JFK Boulevard, Suite 1230  
Philadelphia, Pennsylvania 19102

FOR THE DEFENDANT: MORGAN, LEWIS & BOCKIUS, LLP  
BY: MICHAEL L. BANKS, ESQUIRE  
1701 Market Street  
Philadelphia, Pennsylvania 19103

BLANK ROME LLP  
BY: MICHAEL J. EAGLES, ESQUIRE  
One Logan Square  
130 North 18th Street  
Philadelphia, Pennsylvania 19103

GREGG B. WOLFE, RPR, CM  
Official Court Reporter  
601 Market Street, Room 1234  
Philadelphia, Pennsylvania 19106  
(215) 460-1511

1 (The Court began the proceedings at  
2 9:30 a.m.)

3 THE COURT: Good morning, lady and  
4 gentlemen. Welcome back this morning. We're  
5 ready to resume with the trial.

6 Next witness.

7 MR. GOLDSHAW: We call Robert Jones.

8 ROBERT BENSON JONES, was duly sworn.

9 DIRECT EXAMINATION

10 BY MR. GOLDSHAW:

11 Q. Good morning, Mr. Jones.

12 A. Good morning.

13 Q. We heard a lot about you yesterday, as being  
14 described as a job coach.

15 Would you please explain to the jury  
16 briefly what you do for a living?

17 A. Well, I'm really a consultant. I have 32  
18 years. I'm a lawyer, a CPA. I was the only  
19 person who worked for a big four accounting firm  
20 who set up three practices in three different  
21 cities. So I'm pretty entrepreneurial, set up  
22 businesses from zero to 12 people in about two  
23 years at both Washington, D.C. and Philadelphia  
24 for Ernst & Young.

25 So I'm an entrepreneur, a business

1 builder, and now I have my own business.

2 Q. Would you please describe to the jury a  
3 little bit about, specifically, the job coach  
4 function that you perform for clients?

5 A. My main task is consulting, usually to  
6 boards of directors who are not-for-profit  
7 compensation committees or for-profit  
8 compensation committees.

9 In the course of my career, I've done a  
10 lot of different things in benefits and  
11 compensation. I've also done performance  
12 evaluation, performance metrics.

13 Quote, "job coach," close quote, is  
14 sort of a title that evolved in this instance  
15 through some of the things that I was doing to  
16 help Mrs. Speight.

17 Q. How did you first come to know Wanda  
18 Speight?

19 A. I was recommended by a law firm, actually  
20 two law firms, and, as it evolved, Mrs. Speight  
21 called me first. She was very concerned about  
22 a -- more than 50-page offer that was being  
23 presented to her by her new employer, and --

24 Q. I'm sorry, I'm going to jump in just a  
25 second.

1                   When you referred to her new employer,  
2           could you tell us the employer and the time  
3           period?

4                   This is 2006, and the new employer was  
5           Capmark?

6           A.   That's right.

7           Q.   She was still working at Capmark at the  
8           time?

9           A.   That's correct.

10          Q.   Okay. Please continue.

11          A.   That's correct. In other words, as happens  
12          with a change of control, she had a new employer  
13          at her place of business and tremendous  
14          uncertainty, of course, hits people at that  
15          time.

16                   But she also had this large stack of  
17          papers to consider in regard to a restricted  
18          stock offering, and had to make a decision,  
19          "what do I do about this. This is a significant  
20          investment."

21                   I was initially hired just to explain  
22          that to her, to say what the pros and cons were,  
23          what the downside was of investing or not  
24          investing.

25          Q.   Mr. Jones, could you please just summarize

1 the advice that you gave Ms. Speight, with  
2 regard to this offer to purchase stock in  
3 Capmark and the result?

4 A. Well, actually, my recollection --

5 MR. BANKS: Objection.

6 THE COURT: One moment.

7 MR. BANKS: I don't understand what the  
8 relevance of Mr. Jones' advice to Ms. Speight  
9 was. Ms. Speight's communications to Mr. Jones  
10 were admissions of a party.

11 THE COURT: You're objecting on  
12 relevance. You don't have to give me a speaking  
13 objection.

14 MR. BANKS: Okay. I'm sorry, Your  
15 Honor.

16 THE COURT: Your objection is  
17 overruled. This door has been opened, and I'm  
18 allowing him some leeway to explain away some of  
19 what has transpired to this point.

20 MR. BANKS: Very well.

21 THE COURT: All right?

22 Moving along.

23 BY MR. GOLDSHAW:

24 Q. Do you remember my question?

25 A. I do. I do.

1 Q. Okay.

2 A. And I was starting to answer that  
3 Mrs. Speight actually was very interested in  
4 investing, but she just wanted to know the down  
5 side.

6 MR. BANKS: Excuse me. Your Honor,  
7 now, I would object on hearsay grounds if he's  
8 describing what Ms. Speight said to him.

9 THE COURT: And, obviously, Ms. Speight  
10 is here and you examined her and your  
11 cross-examination was on statements that she  
12 made to Mr. Jones.

13 MR. BANKS: Right.

14 THE COURT: Your objection is noted.  
15 It is overruled. You may have a continuing  
16 objection along this line.

17 MR. BANKS: Thank you, Your Honor.

18 THE COURT: Anything else?

19 MR. BANKS: No, no.

20 THE COURT: Excellent. Let's move  
21 along.

22 BY MR. GOLDSHAW:

23 Q. Mr. Jones, please continue, if you recall  
24 the question, otherwise, I'll --

25 A. I do. Just to finish very quickly,

1 Mrs. Speight wanted to invest, but just wanted  
2 to know the pros and cons, the tax, some of the  
3 tax ramifications, how that would affect her.

4 As I recall, it was a significant  
5 investment, roughly 140,000, which, to my  
6 memory, was even more than her salary for a  
7 year.

8 So that's a significant commitment to  
9 make, and she naturally was seeking out somebody  
10 who would explain some of the pros and cons,  
11 what are the traps for the unwary.

12 Q. To your knowledge, did Ms. Speight actually  
13 make that significant investment in Capmark?

14 A. My understanding is that she did. I never  
15 saw the paperwork, but I understood she was  
16 going to do it.

17 Q. Okay. Aside from your conversations with  
18 Ms. Speight regarding this investment in  
19 Capmark, did your communications pertain to any  
20 other matters?

21 A. Well, as we got into that, many -- I  
22 interview executives for a living. Many of my  
23 executives have been through significant change  
24 and control, where it feels like the ground is  
25 shifting under their feet.

1           As we became acquainted, she had some  
2       questions about the best way to respond and how  
3       to -- I always judged that she had tremendous  
4       sincerity and tremendous commitment to the job.

5           It was more about, Bob, I just want to  
6       make sure I do the right thing. How would you  
7       perceive this and what would your suggestion be?

8           That's sort of the, quote, "job coach."  
9       I'm not really that, but it evolved from working  
10      on a very complicated investment to -- I've been  
11      through a couple of mergers where there was a  
12      change of management, and what are some of the  
13      things that leaders can do to make sure that  
14      they send the right message.

15      Q. Did you communicate with Ms. Speight? We  
16      know you communicated with her by e-mail.

17           Did you communicate with her, other  
18      than by e-mail, regarding the job coaching as to  
19      the transition?

20      A. Well, she called me fairly frequently, I  
21      would say, once or twice a week. The phone  
22      conversations were more frequent than e-mails by  
23      probably three to one.

24           It was more about -- I just want to  
25      make sure I'm on the right track here. Here's



1 what happened the past couple of days.

2 I viewed that as very natural. In  
3 fact, I found her to be sincere. I found a  
4 commitment level that was high, and I was  
5 impressed because I have dealt with CEOs, CFOs,  
6 Number 1.

7 Number 2, of all the people I have  
8 dealt with, I would have rated her very, very  
9 highly, compared to all the executives that I've  
10 dealt with in similar circumstances.

11 There's great uncertainty. You have 20  
12 people reporting to you. Each one of them are  
13 asking you what should we do.

14 To my way of understanding, she always  
15 asked the right questions, and she always  
16 responded well. In fact, I used this word for  
17 my son, "coachable." She took my advice, and  
18 she responded very well to it.

19 My favorite recollect is that after the  
20 year was over and a new team was on board, she  
21 asked me, what should we do now that we know our  
22 results?

23 In my style, I said, well, Wanda,  
24 that's what pizza was invented for.

25 She said, Bob, what do you mean?

1 I said, well, you ought to have a  
2 meeting with your staff, and you ought to  
3 highlight -- get a poster board and highlight  
4 the things that did well, that went very well,  
5 that were strengths for the group, and then  
6 highlight on a separate board the things that  
7 you need to work on and get everybody's  
8 impression. Have everyone contribute. That way  
9 the group will feel -- and be a part of this.  
10 Everyone will have a voice.

11 And we said together that has to show  
12 the genuineness of what you're feeling. You  
13 want to do the right thing and you want to tell  
14 your people, let's improve on last year.

15 They happened to have had a good prior  
16 year. They happened to do very well.

17 So I said, let's enhance the strengths,  
18 let's try to minimize the weaknesses for your 20  
19 people and move forward. By the way, tell  
20 management what you learned, because then you're  
21 giving them insight. You're showing them two  
22 things. One, that you care.

23 And, to my recollection, she really not  
24 only did care, but wanted to do the right thing  
25 every time.

1           Secondly, you're giving management some  
2   insight about what do the people really feel,  
3   what can we do to do better?

4           My experience with corporate takeovers  
5   or mergers or acquisitions is people freeze.  
6   There's fear. People say, boy, I've got a new  
7   boss, what do I do now?

8           And there was a little bit of fear  
9   percolating up to Wanda. It would be very  
10   unusual if there wasn't. It would be very  
11   unusual if she didn't feel some fear, too. She  
12   was more fearless than that, though.

13          She kept saying, I want to do the right  
14   thing by my team; I want to help them; I want to  
15   get to the right place, and I want management to  
16   respect us for our strengths, but I want to work  
17   them to make it even better.

18          When I use the word "coachable" from  
19   sports, that's the way I viewed her, she wanted  
20   to do the right thing throughout.

21   Q. Mr. Jones, you had mentioned that you would  
22   have rated Wanda very, very highly, and I wanted  
23   to make sure I understood.

24          Were you talking about highly in terms  
25   of her attitude or her abilities or what?

1 A. I think it's been a couple years since she  
2 and I talked about this.

3 The dominant impression I had is a  
4 positive attitude. There were two things, a  
5 positive attitude and a desire to do the right  
6 thing.

7 If I were rating it on a scale, I don't  
8 give a ten to anybody, but I would have said,  
9 she's a nine or a nine and-a-half, just for what  
10 I saw, just what I went through personally,  
11 one-on-one, day after day.

12 I never saw negativity, and it would  
13 have been easy to be negative about some of the  
14 things that happened to us, that we don't  
15 understand.

16 But she was always saying, I want to do  
17 the right thing by my team; I want to convey the  
18 right message to them, and I want to move  
19 forward. In other words, I love my job; I want  
20 to keep going with what I'm doing, and I want to  
21 do the right thing by these 20 people who are  
22 depending on me.

23 Q. Mr. Jones, at the time you were advising  
24 Ms. Speight, you were being paid for your  
25 services?

1 A. I was, yes.

2 Q. Were you being paid by Wanda Speight  
3 personally to help her, or was it through  
4 Capmark?

5 A. I was being paid by Wanda Speight  
6 personally.

7 MR. GOLDSHAW: I have nothing further  
8 at this point.

9 THE COURT: Cross-examination.

10 MR. BANKS: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. BANKS:

13 Q. How much were you being paid by Ms. Speight?  
14 Was it on an hourly basis?

15 A. Yes. My hourly rate is about 40 percent of  
16 what it was in corporate life.

17 Q. What was your hourly rate that you were  
18 charging to Ms. Speight?

19 A. 250 an hour.

20 Q. Your job was to help her, right?

21 A. Yes.

22 Q. You're being paid by Ms. Speight to be here  
23 today to help her?

24 A. No, sir. I'm not being paid by anyone  
25 today. I'm here because I thought it was the

1 right thing to do.

2 Q. How much would you say that Ms. Speight paid  
3 you in total?

4 A. It would have been a small engagement for  
5 us, probably three to 4,000, something like  
6 that, over a couple months.

7 Q. That was over the couple months in the  
8 spring of 2006?

9 A. Right.

10 Q. Now, you said that you believed from talking  
11 to Ms. Speight that you could judge sincerity  
12 and commitment on her part?

13 A. Yes. I interviewed dozens of executives,  
14 all year, every year.

15 Q. My question was whether you could detect  
16 sincerity or commitment on her part.

17 A. No question.

18 Q. No question?

19 A. No question.

20 Q. Did you ever talk to Mr. McCool?

21 A. Never.

22 Q. Did you ever talk to Mr. Lipson?

23 A. Never.

24 Q. Did you ever talk to Linda Pickles?

25 A. Never.

1 Q. How many other Capmark employees have you  
2 ever talked to besides Ms. Speight?

3 A. I did some work with the predecessor to  
4 Capmark before they became Capmark, but that's  
5 the only time.

6 Q. Tell me the last time you ever talked to  
7 Capmark, other than Ms. Speight.

8 A. I never have.

9 Q. Okay. So you're not in a position to assess  
10 their sincerity or their commitment, are you?

11 A. Actually, I'm not. I'm not.

12 Q. Okay. I want to show you --

13 MR. BANKS: Where is the Defendant's  
14 Exhibit binder?

15 MR. SALMANSON: It's up there. I put  
16 it up there for you.

17 BY MR. BANKS:

18 Q. Turn to Tab 23.

19 A. I got here without my reading glasses, so I  
20 apologize. It is a little fuzzy.

21 Q. Okay. That's an e-mail that includes an  
22 e-mail that Ms. Speight sent on May 25th, 2006  
23 to Mr. McCool, with copies to seven other  
24 people.

25 Did Ms. Speight talk to you about that

1 before she sent the e-mail?

2 A. No, I've not seen this.

3 Q. Did she review it with you after she sent  
4 the e-mail?

5 A. I don't recall.

6 Q. Did you ever talk to her about the subject  
7 matter of that e-mail?

8 A. Let me just real quickly read it. It's  
9 about a half page, and I haven't seen it before.

10 Q. I'll note for you that in the documents that  
11 we've seen, I haven't seen any e-mails from  
12 Ms. Speight forwarding that to you.

13 Do you have a recollection of receiving  
14 it from her?

15 A. Just a second. I'm halfway through.

16 MR. GOLDSHAW: I'm sorry. If I may  
17 point out, the witness just said that it was a  
18 half page, but the document is actually five  
19 pages. I just want to make sure that the  
20 witness is clear.

21 MR. BANKS: I asked about Ms. Speight's  
22 e-mail --

23 THE COURT: Counsel, counsel. He's  
24 asking him to read about this one particular  
25 page. He wants an opportunity to read this



1 page.

2 Let's proceed. All right?

3 THE WITNESS: This is about a specific  
4 set of loans. I don't recall any of the  
5 transactions here.

6 BY MR. BANKS:

7 Q. You don't recall Ms. Speight talking to you  
8 about that either before or after she sent the  
9 e-mail?

10 A. I do not.

11 Q. Sitting here today, then, you can't tell  
12 whether she was being sincere or cooperative  
13 when she wrote that e-mail, can you?

14 A. All I can tell at the beginning is her  
15 statement, "Sorry for the communications  
16 breakdown. Let me try again."

17 In my experience, you wouldn't write  
18 that if you weren't trying to break through some  
19 barrier to do as well as you could.

20 Q. Unless maybe someone was trying to be  
21 sarcastic.

22 A. I don't see sarcasm in that, sir, just from  
23 reading it.

24 Q. So you believe you're an expert enough from  
25 reading that first line to be able to tell what

1 Ms. Speight meant in this e-mail?

2 A. I would not characterize myself as an expert  
3 in human behavior. I'm not a psychologist.

4 What I am saying is that, in my  
5 experience interviewing hundreds of executives  
6 over 32 years, when someone says "Sorry for the  
7 communication breakdown, let me try again," they  
8 are making an effort.

9 Q. If they are being sincere, right?

10 A. No, they are making an effort. Why would  
11 you do that if you weren't trying to communicate  
12 better?

13 Q. Okay. Look at the last paragraph of that  
14 e-mail, the one that begins, "Joe, please be  
15 aware that if we're being told to risk rate the  
16 SGP loans and Canadian portfolio, I cannot be  
17 confident in the accuracy of assigned ratings,"  
18 and then it continues.

19 Do you know what's referred to there?

20 A. Again, I'm not a loan expert. I don't know  
21 the technical background behind this.

22 Q. Do you know whether that was an accurate  
23 assessment of the state of affairs at the time?

24 A. I don't know anything about that.

25 Q. If we look up from there, it says, the third

1 paragraph, "consequently the former PLG asset  
2 management official individuals are not in a  
3 position to perform an evaluation for risk  
4 rating purposes."

5 Do you have any idea what Ms. Speight  
6 was talking about there?

7 A. I don't, really. I could conjecture, but I  
8 don't know the facts.

9 Q. Would it be correct to say that all of your  
10 information about Ms. Speight's performance and  
11 attitude and what she did at Capmark came from  
12 Ms. Speight?

13 A. Yes. I mean, dealings over a couple months,  
14 interactions, questions and answers and  
15 interested queries.

16 Q. You don't know what she said in meetings  
17 with Mr. McCool and Mr. Lipson and others, do  
18 you?

19 A. No. I wasn't there. I would have no clue.

20 Q. Did she ever tell you about a meeting she  
21 had with Mr. McCool on May 23rd, 2006?

22 A. The conversations that we had -- and, again,  
23 it's over two years ago -- my dominant  
24 impression is that Ms. Speight would come back  
25 to me and say, I had a meeting and I don't think

1 it went as well as I would have liked.

2 Now, in my experience, there are very  
3 few people who would say that, very few people  
4 who would try to do better based on something  
5 like that. She spent the time.

6 She had the sincerity to say, I want to  
7 do better. Are there any steps I'm missing in  
8 human resource management that I should have  
9 followed?

10 We selected best practices that send a  
11 clear message, because in many cases --

12 MR. BANKS: Your Honor, I think the  
13 question was whether she told him about a  
14 meeting on May 23rd.

15 THE WITNESS: No, she did not.

16 BY MR. BANKS:

17 Q. So you don't know, even sitting here today,  
18 that Ms. Speight met with Mr. McCool, Clare  
19 Dooley, and Ned Finkenstaedt on May 23rd, 2006?

20 A. There were several meetings with Mr. McCool.  
21 I do recall her mentioning meetings with him,  
22 but I don't recall a specific meeting with three  
23 people. It's over three years ago, sir.

24 Q. Have you seen any e-mails from Ms. Speight  
25 describing that meeting to you?

1 A. I do not recall.

2 Q. In preparation for today's testimony, have  
3 you gone back to look at e-mails between you and  
4 Ms. Speight from 2006?

5 A. I collected all the e-mails about six months  
6 ago for your counsel, at your request, within  
7 three days of receiving the subpoena, but I did  
8 not review them.

9 Q. You haven't reviewed anything in preparation  
10 for today?

11 A. I have not.

12 Q. So you don't know anything about the back  
13 and forth that was in the e-mails that you may  
14 have had with Ms. Speight in 2006?

15 A. I do not.

16 Q. Have you ever seen any e-mails between  
17 Ms. Speight and Mr. McCool or Ms. Speight and  
18 others in the servicing department at Capmark?

19 A. I don't recall those.

20 Q. Did you ever see Ms. Speight's e-mail to  
21 Beth Wilson?

22 A. No, sir.

23 Q. Do you know who Beth Wilson is?

24 A. I do not.

25 Q. Ms. Speight testified that she was seeing

1 another career counselor by the name of Beth  
2 Wilson, around the same time she was talking to  
3 you.

4 Did you know that?

5 A. I did not.

6 Q. Okay. She didn't even mention that to you  
7 back in 2006?

8 A. No. It never came up.

9 Q. Did you know -- and you can -- well, I'll  
10 ask you, did you know that Ms. Speight wrote to  
11 Ms. Wilson a few days before she transitioned  
12 into Mr. McCool and Mr. Lipson's group that she  
13 was somewhat "indifferent" about the company?  
14 "Indifferent," that's a quote.

15 A. For my part, sir, I never heard that in all  
16 the involvement with her. I only heard  
17 commitment.

18 Q. Did you know that she wrote in her own words  
19 that the management she would be reporting to  
20 didn't excite her, no vision, not good  
21 communicators?

22 A. Never heard any of that.

23 Q. Okay. Did you know that she wrote to  
24 Ms. Wilson?

25 A. Excuse me. I did hear implications that

1 there were concerns from her people that  
2 communications were spotty and sometimes  
3 nonexistent, where areas needed to be clear.

4 And I explained to her that it's very  
5 common in a situation, change of management.  
6 The rumor mill is hyperactive. The rumor mill  
7 is really working 100 miles an hour.

8 Q. I think my question was, did you know that  
9 Ms. Speight wrote that to Ms. Wilson?

10 A. I did not. Sir, I don't know who Ms. Wilson  
11 was. I said that earlier.

12 Q. Did you know that Ms. Speight wrote a few  
13 days, before she moved into the servicing  
14 department, that publicly she would continue to  
15 say that she was committed to seeing the  
16 transaction through? Publicly.

17 A. I did not, sir.

18 Q. Would you have expected her to tell you that  
19 she was working with another career counselor?

20 A. Sir, I don't believe it's relevant today. I  
21 worked with Mrs. Speight on areas that she asked  
22 me questions about. I found her to be a very  
23 willing, very committed, very dedicated  
24 employee, trying to do the right thing, the best  
25 thing she could do.

1 Q. That was based on what she told you?

2 A. No, no. That was based on our interaction.

3 Q. That was based on what she wrote to you and  
4 what she told you and what you assessed of that,  
5 correct?

6 A. And the way I assessed it, that's correct,  
7 in my professional judgment.

8 MR. BANKS: Thank you.

9 THE COURT: Any redirect?

10 MR. GOLDSHAW: Briefly.

11 REDIRECT EXAMINATION

12 BY MR. GOLDSHAW:

13 Q. Mr. Jones, Mr. Banks read to you part of the  
14 sentence that he read to Ms. Wilson. I'd now  
15 like to read to you the full sentence, including  
16 the part that he left out.

17 "Publicly, I will continue to say that  
18 I am committed to seeing the transition  
19 through." Here's the part he left out. "And  
20 making sure my staff is placed as optimally as  
21 possible or treated fairly if they are  
22 outplaced."

23 Having heard the full sentence, can you  
24 now tell me if that's consistent with the tenor  
25 of the conversation?



1 A. That was the Mrs. Speight that I knew. I  
2 mean, I never heard anything other than, I want  
3 to do the best for my people; I need some  
4 clarity on some things because they are asking  
5 me questions that I can't answer, and I want to  
6 do the right thing with management.

7 And, again, I would rate her very  
8 highly, compared to the top executives that I  
9 have worked with in my career. She was  
10 really -- what we worked on together was to try  
11 to always do the right thing, and to make sure  
12 that the messages weren't misunderstood.

13 Q. Now, did any of the documents that Mr. Banks  
14 showed you during his questioning, or read to  
15 you in part, cast any doubt on your earlier  
16 assessment as to the level of Ms. Speight's  
17 commitment to this transition and the company?

18 A. Not even. No, sir.

19 MR. GOLDSHAW: I have nothing further.

20 THE COURT: Recross.

21 MR. BANKS: Just briefly, Your Honor.

22 THE COURT: Yes.

23 RECROSS-EXAMINATION

24 BY MR. BANKS:

25 Q. You felt Ms. Speight was committed to the

1 transition?

2 A. I felt, for several reasons, that she was  
3 committed to the transition. One, she invested  
4 \$140,000, which is not a small sum for anybody.

5 And, in talking through that, she  
6 explained very carefully that she wanted to have  
7 a stake in the future of the business.

8 Why would you do that if you weren't  
9 interested in being a player, being a major  
10 player/participant in what was going on.

11 The second thing was, just throughout  
12 the whole transaction, she was conscientious and  
13 sincere about trying to do the right thing.  
14 There were a couple times that I suggested  
15 things, like our group meeting.

16 And I said, Wanda, I can't think that  
17 anything would be bad about that. If you have a  
18 meeting with your employees and you tell  
19 management about that, what you have learned,  
20 they gain something; you've shared something  
21 with them, and your people have gained something  
22 because they feel like they participated in a  
23 process that would improve the system.

24 So I was hoping it would be a win-win.

25 Q. You haven't seen the transcript of

1 Ms. Speight's testimony from yesterday, have  
2 you?

3 A. No, I have not.

4 Q. You weren't in the courtroom?

5 A. No, I was not.

6 Q. All right. Let me read to you just a little  
7 bit, and see if this is consistent with what you  
8 recall Ms. Speight telling you.

9 MR. GOLDSHAW: I'm going to make an  
10 objection. This is way beyond the scope of  
11 redirect, which involved two questions  
12 concerning the documents that Mr. Banks had  
13 shown him earlier.

14 MR. BANKS: Your Honor --

15 THE COURT: Counsel, I didn't ask for  
16 any comment from you.

17 MR. BANKS: I'm sorry, Your Honor.  
18 That's correct.

19 THE COURT: Counsel, your last question  
20 was so broad, that it gave a generalization by  
21 this witness. I think this is appropriate  
22 recross.

23 Your objection is noted. It's  
24 overruled. All right?

25 Let's get to the issue, though,

1 ultimately.

2 MR. BANKS: I just have a couple  
3 questions, Your Honor.

4 THE COURT: All right.

5 BY MR. BANKS:

6 Q. Page 116, I asked her about the very e-mail,  
7 that D-11, that you were looking at, the one to  
8 Beth Wilson.

9 She said, Page 116, Line 21,

10 "A. So that is why from an emotional  
11 standpoint I had to, as I put it, calm myself  
12 down.

13 "I started saying I'm going to be  
14 indifferent and started taking the approach, I  
15 have to be indifferent about what is happening."

16 Did she talk to you about that between  
17 yesterday and today?

18 A. Did not.

19 Q. Okay. One more thing about that quote that  
20 he read to you, the part about being publicly.  
21 Do you remember that in the e-mail in D-11? Do  
22 you have that in front of you?

23 Take a look at D-11. Mr. Goldshaw read  
24 the rest of the sentence that publicly she  
25 would --

1 A. Actually, this is first time looking at  
2 D-11. It's about a page.

3 Q. Okay. All right. He read, "Publicly, I  
4 will continue to say that I'm committed to  
5 seeing the transition through."

6 You don't need to read it again unless  
7 it will help you. That's just what I'm asking  
8 about.

9 A. What's your question?

10 Q. Here's my question.

11 MR. GOLDSHAW: I'm sorry. I have to  
12 object, because I certainly read the full  
13 sentence, and Mr. Banks, again, just read a part  
14 of it.

15 THE COURT: Yes, but he has a right to  
16 limit his part. You read the whole -- it's up  
17 for the jury to recall.

18 Your objection, if it's in the form of  
19 an objection, is overruled. All right?

20 MR. GOLDSHAW: Yes.

21 BY MR. BANKS:

22 Q. Mr. Jones, I asked Ms. Speight yesterday,  
23 Page 122, Line 10,

24 "Q. Publicly, you would continue to  
25 say that you were committed. Was that different

1 from being actually committed to see the  
2 transition through?"

3 And Ms. Speight answered,

4 "A. It was different from being  
5 emotionally invested in the transition to a  
6 point that I got frustrated."

7 Did she discuss that answer with you  
8 before today?

9 A. Did not, no, sir.

10 MR. BANKS: Nothing further. Thank  
11 you, Mr. Jones.

12 THE COURT: You're done with this  
13 witness now?

14 MR. GOLDSHAW: Yes, Your Honor.

15 MR. BANKS: Yes, Your Honor.

16 THE COURT: Excellent.

17 You may step down now, sir, and watch  
18 your step.

19 I take it this witness may be excused?

20 MR. GOLDSHAW: Yes, Your Honor.

21 MR. BANKS: Yes, Your Honor.

22 THE COURT: You're excused. Next  
23 witness.

24 MR. GOLDSHAW: Thank you, Your Honor.

25 THE COURT: Sure.

1 MR. SALMANSON: Your Honor, we'd like  
2 to call Mr. McCool. We understand that he was  
3 supposed to be here at around 10:00.

4 THE COURT: Well, it's around 10:00.  
5 Check to see if he's here.

6 MR. BANKS: Your Honor, we had  
7 understood he would be here at 10:15, and we  
8 also understood that the next witness would be  
9 Mr. Lipson, who is here.

10 Mr. McCool doesn't appear to be here  
11 yet.

12 THE COURT: So what are we going to do,  
13 counsel? We have time. Let's move it.

14 MR. SALMANSON: Your Honor, we told  
15 them yesterday afternoon, at the end of the day,  
16 that we wanted Mr. McCool first thing this  
17 morning.

18 MR. BANKS: They told us last night,  
19 Your Honor, after we had told Mr. McCool he  
20 would follow Mr. Lipson.

21 MR. SALMANSON: I came into chambers  
22 and told you.

23 THE COURT: Counsel, counsel, this is  
24 not a bar. This is my courtroom.

25 MR. SALMANSON: I'm sorry, Your Honor.

1 But he claims --

2 THE COURT: I don't want to hear he did  
3 this or he did that.

4 Lady and gentlemen, we're going to take  
5 our break early this morning to allow this  
6 witness to get here by 10:15. If he's not, then  
7 I'll address that issue with counsel out of your  
8 presence. All right?

9 In any case, please do not talk about  
10 the case among yourselves or with others. We'll  
11 call you back in as soon as this morning's break  
12 is over.

13 You have at least 15 minutes. All  
14 right? So enjoy.

15 (Recess was held at 10:00 a.m., at  
16 which time the jury exited the courtroom.)

17 THE COURT: Counsel, from this point  
18 on, if there's any objections, any discussions,  
19 it's between counsel and the Court. Opposing  
20 counsel does not have the right to interject  
21 when counsel is speaking to the Court. This is  
22 not a bar or a playground or your offices. This  
23 is my courtroom, and you conduct yourself  
24 accordingly.

25 I tell you, I will pass out sanctions,



1 hold contempt, if you can't comply with the  
2 rules of conduct of this courtroom.

3 That goes for everybody. Is that  
4 understood?

5 MR. SALMANSON: Yes, Your Honor.

6 MR. GOLDSHAW: Yes, Your Honor.

7 MR. BANKS: Yes, Your Honor.

8 THE COURT: I expect nothing less.

9 We are in recess until this witness  
10 gets here, and hopefully he's here at 10:15.

11 (Recess was held at 10:00 a.m.)

12 (The Court resumed the proceedings at  
13 10:15 a.m.)

14 THE COURT: Are there any other  
15 witnesses that counsel made arrangements for  
16 appearances to be here at a given time?

17 MR. SALMANSON: I think we're all set  
18 on the rest of the schedule.

19 THE COURT: I don't want to "think"  
20 that we're all set. I want to make sure that we  
21 don't have any other interruptions in the flow  
22 of this trial.

23 Are there any other witnesses that the  
24 plaintiff is going to call that require the  
25 defense to have their witnesses present?

1 MR. SALMANSON: There's  
2 Mr. Hohenleitner, who, I understand, is going to  
3 be here this afternoon.

4 THE COURT: What time this afternoon?

5 MR. BANKS: Whatever time he's  
6 requested, Your Honor, by Plaintiff's counsel.

7 THE COURT: Why don't we have him here  
8 at the beginning of the afternoon, in case  
9 you're done with a witness early or if there's  
10 some emergency or something, so that we can  
11 continue on? I mean, if he has to sit here and  
12 wait, sobeit.

13 MR. BANKS: We'll ask him, Your Honor,  
14 to come in, to make sure he's here by the time  
15 we start after the lunch break. If he has to  
16 wait, we agree, sobeit.

17 THE COURT: Very well.

18 Any others?

19 MR. GOLDSHAW: The only notable point,  
20 which is not an issue in my view, is that on  
21 Monday we discussed that if we do get to our  
22 expert this afternoon, I'll need to confer with  
23 him to make sure he went over the documents.

24 We addressed that on Monday, and I  
25 don't actually think we are going to get to him

1     today, but in the unlikely event we do, I don't  
2     want Your Honor to think that I'm bringing it up  
3     afterwards.

4             THE COURT:   How long is it going to be  
5     that you have to go over with him about the  
6     documents?

7             MR. GOLDSHAW:  I actually don't know  
8     what his new calculations are right now as I'm  
9     speaking.  I imagine it will be quick, but I  
10    haven't actually seen his final numbers.  I have  
11    to give it to opposing counsel.

12            I also, in fairness to opposing  
13    counsel, if he needed a few minutes to look at  
14    the numbers, I have no objection to that.

15            THE COURT:  That's my call.  But in  
16    reference to you, you would only need a few  
17    minutes to review the documents or go over that  
18    with your witness?

19            MR. GOLDSHAW:  I've seen the  
20    documents.  Depending on what he says, I  
21    would --

22            THE COURT:  You have numbers, then?

23            MR. GOLDSHAW:  I do not.

24            THE COURT:  Okay.  So you don't know  
25    what the numbers are?

1 MR. GOLDSHAW: I know this morning he's  
2 calculating them, as we are in court.

3 THE COURT: Okay.

4 MR. GOLDSHAW: And in the unlikely  
5 event he comes, Your Honor talked about taking a  
6 short time, maybe an hour -- I don't think it  
7 would take that time -- to just meet with him to  
8 make sure that I am not finding out what he has  
9 to say for the first time when he's on the  
10 stand.

11 THE COURT: Okay. Is he faxing the  
12 numbers and the figures to you today, after he's  
13 finished them this morning? Can we get those  
14 sent here so that the defense has those before  
15 the afternoon is over, and you'll have them also  
16 so that you can be ready so we can cut down any  
17 other delays in this trial?

18 I tell you, the reason being, I'm not  
19 going to be here next Wednesday trying this  
20 case. All right? I have reservations. I'm  
21 going West.

22 MR. GOLDSHAW: The way I have left it  
23 with him, as of right now, if he gets the call,  
24 he's going to come to court; he's going to have  
25 extra copies, and I imagine that in the time it

1 takes him to explain it I can give it to  
2 opposing counsel, and we can all be ready.

3 In other words, I don't know if there's  
4 any more efficiency, from my perspective, to get  
5 the numbers because until I understand what it  
6 is that got him there -- he's not preparing a  
7 full report.

8 THE COURT: I understand that, counsel,  
9 believe me, I do.

10 MR. GOLDSHAW: Okay.

11 THE COURT: But my concern is that the  
12 defense has an adequate opportunity also to  
13 review this new addition that your expert is  
14 going to be testifying to.

15 MR. GOLDSHAW: Yes, Your Honor.

16 THE COURT: And the sooner the defense  
17 gets that, the better it is for everybody, and  
18 it will at least expedite this case moving along  
19 at some later point.

20 MR. GOLDSHAW: Yes. Your Honor  
21 mentioned the fax. Can I fax it to your  
22 chambers?

23 THE COURT: Yes, you can fax it to my  
24 chambers.

25 MR. GOLDSHAW: Okay. What I will do is

1 during the next break, I'll instruct my  
2 secretary when she gets it to fax it to your  
3 chambers.

4 THE COURT: Excellent.

5 MR. GOLDSHAW: Thank your.

6 THE COURT: Okay.

7 MR. BANKS: I'm sorry, just on  
8 scheduling.

9 THE COURT: Sure.

10 MR. BANKS: My best expectation is that  
11 all the testimony will finish, I believe in both  
12 cases, by the close of tomorrow, or the latest,  
13 Friday morning. I just wanted to alert you.

14 Do you folks agree?

15 MR. SALMANSON: I would be surprised if  
16 it went past that.

17 MR. BANKS: If there are changes, we'll  
18 let you know by the end of the day, but that's  
19 our best expectation.

20 THE COURT: We shall see, counsel. In  
21 any case, I'm putting you on notice that I will  
22 not be here next Wednesday. All right?

23 MR. BANKS: I hope you're going  
24 somewhere good.

25 THE COURT: It is good.

1 MR. BANKS: Good.

2 THE COURT: All right. Let's bring in  
3 this jury, and get this witness on the witness  
4 stand.

5 MR. BANKS: I just want to make sure  
6 this is turned off, so I don't get held in  
7 contempt.

8 THE COURT: He's not in yet?

9 MR. SALMANSON: No.

10 THE COURT: Okay.

11 (The jury entered the courtroom at  
12 10:20 a.m.)

13 THE COURT: Okay. You may be seated.  
14 Now, next witness.

15 MR. SALMANSON: Plaintiff calls Mark  
16 McCool.

17 THE COURT: Sir, would you please come  
18 up here, and watch as you enter the well of the  
19 Court? Step around.

20 MARK EDWARD MCCOOL, was duly sworn.

21 DIRECT EXAMINATION

22 BY MR. SALMANSON:

23 Q. Good morning, Mr. McCool.

24 A. Good morning.

25 Q. Can you just tell us, you're currently

1 employed at Capmark?

2 A. Yes, I am.

3 Q. All right. And how long have you been  
4 there?

5 A. A little over ten years.

6 Q. All right. And just so we're clear, prior  
7 to 2006, it was GMAC CM, correct?

8 A. That's correct, yes. Even before that I was  
9 with GMAC Financial, so that was a total of 20  
10 years.

11 Q. And GMAC Financial was a subsidiary of GMAC  
12 CM?

13 A. No. That was the ultimate parent.

14 Q. How long were you in management during that  
15 time period?

16 A. With Capmark Finance?

17 Q. Yes, or its predecessors.

18 A. Fifteen years.

19 Q. I'm going to focus today on the 2006 time  
20 period when GMAC CM became Capmark.

21 So, as of the spring of 2006, what was  
22 your title, if you recall?

23 A. I believe I was a senior vice-president and  
24 managing director.

25 Q. All right. Were you a managing director of



1 a particular area?

2 A. I believe at that time it was for client  
3 relations, our surveillance group, and I think  
4 our acquisitions group.

5 Q. All right. And to whom were you reporting  
6 at the time?

7 A. Michael Lipson.

8 Q. How long had you been reporting to  
9 Mr. Lipson, as of 2006?

10 A. I guess, four years. Four, five years.

11 Q. Now, as senior vice-president, how many  
12 people were working under your jurisdiction?

13 A. At that time, I would say a few hundred.

14 Q. All right. Of those few hundred, how many  
15 were your direct reports?

16 A. Five or six.

17 Q. Do you recall who they were?

18 A. Would you like me to name them, to the best  
19 of my ability?

20 Q. Yes.

21 A. Let's see. Ned Finkenstaedt, Tony Perez,  
22 possibly Clare Dooley, Kathy Marquardt, Madeline  
23 O'Brien, and I don't recall any others right  
24 now.

25 Q. And, at some point, Ms. Speight, correct?

1 A. That's correct, but not in 2006.

2 Q. And Ms. O'Brien was your admin assistant; is  
3 that correct?

4 A. That's correct. Actually, let me correct  
5 that. In '06, it was Wanda Speight as well.

6 Q. Okay. And you mentioned a Kathy somebody?

7 A. Marquardt.

8 Q. What was her position?

9 A. She would have been a senior vice-president.

10 Q. During your time at GMAC or Capmark,  
11 approximately how many people have you  
12 supervised, either directly or as a second-level  
13 management level?

14 A. In total?

15 Q. Yes.

16 A. I don't know. It would be a complete guess.  
17 Several hundred.

18 Q. Okay. And in your position as senior  
19 vice-president of Client Relations, Surveillance  
20 and Acquisition, did you have the authority to  
21 hire and fire people?

22 A. No. I had the authority to make  
23 recommendations, or -- that's about it, I guess.

24 Q. And to whom would you make those  
25 recommendations?

1 A. At the time, it would have been Michael  
2 Lipson.

3 Q. Okay. Do you recall any instances in which  
4 Mr. Lipson did not accept your recommendation?

5 A. I don't know. I can't recall.

6 Q. Now, prior to Ms. Speight transferring over  
7 into -- do you recall that, in 2006, Ms. Speight  
8 transferred, along with her group, into the  
9 servicing area, correct?

10 A. Yes, I do.

11 Q. And part of your bailiwick was in the  
12 servicing area, correct?

13 A. Yeah. The particulars in the servicing area  
14 that I talked about, yes.

15 Q. Now, how did you learn that Ms. Speight's  
16 group was going to come over to Servicing?

17 A. I believe Michael Lipson had told me that  
18 the decision was made.

19 Q. Did you have any discussions with  
20 Mr. Lipson, prior to being told about that,  
21 about whether you thought that was a good idea  
22 or, you know, something that you were in favor  
23 of?

24 A. I was probably aware of it before the final  
25 decision was made to transfer it over.

1 Q. And do you recall whether anybody sought  
2 your input about whether you wanted that to  
3 happen or didn't want that to happen?

4 A. No, I don't think so.

5 Q. Is it fair to say that it wasn't your  
6 decision to make?

7 A. Correct.

8 Q. Okay. Do you recall that, at the time this  
9 decision was made, there was a question about  
10 whether the group would fall within your  
11 jurisdiction or Mr. Carp's jurisdiction?

12 A. Yeah. I recall that discussion, yes.

13 Q. All right. And at the time that the group  
14 came into Servicing, that decision had not yet  
15 been made, correct?

16 A. That's correct.

17 Q. Okay. And did you have an understanding of  
18 how that decision would be ultimately made?

19 A. Yes.

20 Q. Okay. And what was your understanding in  
21 that regard?

22 A. Well, my understanding would have been that  
23 we would take time to understand what the  
24 department did on a daily basis, and define what  
25 roles would lie with Mr. Carp and what roles

1 would lie under my responsibility.

2 Q. All right. Now, prior to Ms. Speight  
3 transferring over to the Servicing Group, had  
4 you had any work-related experience with her?

5 A. I don't believe so.

6 Q. All right. Did you know who she was?

7 A. Yes.

8 Q. Did you have a sense of what her reputation  
9 was within the company?

10 A. No. I knew she was a senior person, senior  
11 manager.

12 Q. All right. Is it fair to say that prior to  
13 her coming over you hadn't formed any  
14 impressions of her?

15 A. That's fair.

16 Q. Do you recall the first time you met with  
17 Ms. Speight?

18 A. I'm not sure I know what you mean by "met  
19 with."

20 Q. Okay. Actually, let me rephrase that.

21 As part of the transition process, do  
22 you recall that you met with Ms. Speight, sat  
23 down with her to talk about the transition?

24 A. Well, sure, after the decision was made, we  
25 definitely sat down.

1 Q. All right. Is it fair to say, at least in  
2 the early discussions, that you didn't sense any  
3 resistance on Ms. Speight's part to having her  
4 group move into Servicing?

5 A. No, not that I recall.

6 Q. Okay. Now, you said that you wanted to take  
7 the time to figure out the role of her group and  
8 what they did.

9 Had you had any experience with the  
10 Proprietary Lending Group or worked with them in  
11 any way prior to the transition?

12 A. Yes, but not in the capacity that Wanda's  
13 group was working.

14 Q. Okay. So not on the asset management  
15 function?

16 A. That's probably a tough distinction. I had  
17 worked with being involved in the client  
18 relations group, which is a group that does  
19 borrower contact and correspondence. I was  
20 aware of questions that would come in from that  
21 group, so I mean I was pretty familiar with it.

22 Q. Okay. Now, you said you needed to take the  
23 time to figure out the roles that Ms. Speight's  
24 group played and the types of things she did  
25 before you decided whether she and her group

1 were going to be reporting to either to you or  
2 to Mr. Carp, correct?

3 A. Well, I think the idea was to understand at  
4 a very granular level what the responsibilities  
5 were, and then -- you know, our Services Group  
6 is a large operation, so we would try to  
7 leverage that operation, and the only way you  
8 could really do that was by understanding the  
9 workings of the group.

10 Q. Okay. At some point, you had enough  
11 information to decide that Ms. Speight's group  
12 should, as a whole, be reporting to you and not  
13 to Mr. Carp, correct?

14 A. No, I don't think so.

15 Q. No? Well, how did you make the decision as  
16 of May 1st -- well, as of May 1st, Ms. Speight's  
17 group came and began reporting into Servicing,  
18 correct?

19 A. Yes, correct.

20 Q. Okay. And approximately ten days later,  
21 around May 12th, you actually then sat down with  
22 Ms. Speight and told her that, in fact, she  
23 would be reporting to you and not to Mr. Carp,  
24 correct?

25 A. I'm not sure of the time frame, but I know

1 at one point I did speak to Wanda about that,  
2 yes.

3 Q. Okay. So, as of the date of whenever that  
4 decision was made, you had gotten enough  
5 information to understand what Ms. Speight's  
6 group did at a granular level to know that it  
7 was more appropriate for her group to be  
8 reporting to you, and not to Mr. Carp, correct?

9 A. No, I don't think so.

10 Q. Well, how did you then make the decision and  
11 tell her on May 12th that they would be  
12 reporting to you and not to Mr. Carp?

13 A. I don't recall that that's the way it  
14 transpired. We had a series of meetings, and  
15 those meetings were all designed to gain an  
16 understanding.

17 Mr. Carp was part of those meetings.  
18 May 1st, the group would have reported to me,  
19 but the idea was to gain an understanding of  
20 that group, and then make the ultimate decision  
21 on how we can, you know, get the most out of the  
22 group and leveraging our Services operation.

23 Q. You asked Ms. Speight, at some point,  
24 whether she thought some of her personnel should  
25 be reporting to Mr. Carp and not to you,



1 correct?

2 A. We were discussing employees all along, so I  
3 believe that's probably correct, yes.

4 Q. All right. Now, you understood that the  
5 Servicing Department didn't quite have the same  
6 cache or aura about it than the group that  
7 Ms. Speight had previously been involved in,  
8 correct?

9 A. Well, I think that was probably my opinion.  
10 I don't know if others shared that opinion or  
11 not.

12 Q. All right. But you thought that Wanda's  
13 group came from the lending side of the  
14 business, which you thought carried with it, I  
15 believe your words were, "a higher luster,"  
16 correct?

17 A. Yes. Again, that was my opinion.

18 Q. All right. And did you have any concerns  
19 that, you know, you needed to convince  
20 Ms. Speight that her group, you know, could  
21 still have the luster that it had when it  
22 transferred over to Servicing?

23 A. I'm sorry. Could you repeat that for me?

24 Q. Sure, sure. Did you have any concerns in  
25 your mind that you needed to convince

1 Ms. Speight that she would be able to carry that  
2 luster with her over into Servicing?

3 A. No. As I would have thought about her, or  
4 as I do now at least, I think anybody that takes  
5 the time to understand our business sees it for  
6 what it is. It's a very intriguing and exciting  
7 business.

8 So, no. I think as Wanda would have  
9 learned more about the group, she would have  
10 seen it for what I do. It's a great group.

11 Q. Okay. And you hoped to educate her in that  
12 regard, correct?

13 A. My responsibility, at that time, was to get  
14 a smooth transition of Wanda's department into  
15 Services to help the company out.

16 So my Number 1 goal was a smooth  
17 transition.

18 Q. All right. You don't recall, in having  
19 discussions with Ms. Speight, her expressing  
20 concerns, at least at the front end, about her  
21 and her group coming over to Servicing, do you?

22 A. No.

23 Q. So, as far as you knew, Ms. Speight didn't  
24 have any particular concerns about moving over  
25 to Servicing, did she?

1 A. Not that she ever expressed to me.

2 Q. And there was a difference in the way that  
3 PLG and the Asset Management Group's  
4 compensation structure worked, as compared to  
5 Servicing, correct?

6 A. Well, I understand there are different  
7 programs. I don't know how theirs worked versus  
8 ours.

9 Q. All right. And did you become aware at some  
10 point that her staff was expressing concerns  
11 that if they came over, that they might suffer a  
12 significant hit on their compensation?

13 A. I don't recall if I ever heard that.

14 I remember in my deposition being shown  
15 an exhibit, and that was the first time that I  
16 had seen that, so I don't know if that's one.

17 Q. All right. Do you recall Ms. Speight asking  
18 you to have a meeting with her staff to address  
19 some of their concerns?

20 A. I do. Well, I don't know if it was to  
21 address their concerns or for me to meet them,  
22 because I did not know many of them.

23 Q. Do you recall meeting with members of  
24 Ms. Speight's staff?

25 A. Yes, I do.

1 Q. Do you remember some of them raising the  
2 issue of, how are we going to be compensated?

3 A. No, I don't.

4 Q. Do you recall discussing with Ms. Speight at  
5 the end of April issues related to the  
6 compensation structure in Servicing, as compared  
7 to on the PLG side?

8 A. No.

9 THE COURT: I take it you handed him  
10 his deposition testimony, so that counsel knows  
11 what you're handing the witness?

12 MR. SALMANSON: Yes. I was just about  
13 to say that.

14 BY MR. SALMANSON:

15 Q. Mr. McCool, I have handed you the  
16 deposition -- you recall that I took your  
17 deposition under oath in February of 2008?

18 A. I do.

19 Q. And I want to direct your attention to Page  
20 56, at the bottom, Line 23, going on to Page 57,  
21 I had asked you just before that, that --  
22 whether you were aware that Ms. Speight's  
23 compensation group had -- was different than the  
24 compensation structure from the rest of the  
25 Global Servicing area?

1 And you said, "Yes."

2 And then I asked you,

3 "Q. And do you recall there being  
4 discussions about whether the compensation  
5 structure from Ms. Speight's group would need to  
6 be consistent with the rest of Global Servicing  
7 or not?"

8 And your answer was,

9 "A. I do. Going through those  
10 questions were helpful. We were on a different  
11 compensation plan."

12 And then I asked,

13 "Q. And who did you have those  
14 discussions with?

15 "A. I still don't remember having  
16 those conversations, but we were under a  
17 different plan than the rest of the company so  
18 that there would have been a discussion of that  
19 plan. I mean, we were under a personal share  
20 plan."

21 Do you recall generally that there were  
22 discussions about the differences between the  
23 two compensation plans?

24 A. No, I really don't generally remember having  
25 conversations. I do remember and I do know that

1 there are different compensation plans. I don't  
2 remember those discussions, though. I wouldn't  
3 have been part of the compensation discussions.

4 Q. But when I said do you recall there being  
5 discussions about whether the compensation  
6 structure from Ms. Speight's group would need to  
7 be consistent with the rest of the Global  
8 Servicing or not, you said you did.

9 You do remember there being  
10 discussions, correct? Bottom of 56 and top of  
11 57.

12 A. I see it here. I mean, as I sit here today,  
13 I understand that there are different plans, so  
14 I guess I would say there probably were  
15 discussions about different plans, but I don't  
16 recall any.

17 Q. And going through those discussions were  
18 helpful, correct?

19 A. I believe your questions assisted me in  
20 remembering that, yes.

21 Q. Okay. So if Ms. Speight had raised the  
22 issues of the different compensation to you or  
23 to others, there was nothing wrong with that,  
24 correct?

25 A. If she raised the difference in the plans?

1 Q. Yes.

2 A. No, there wouldn't be anything wrong with  
3 that.

4 Q. And if her staff was concerned about that  
5 and she was looking to you or to other people to  
6 help address that with her staff, to put them at  
7 ease, that would have been okay, right?

8 A. Certainly, I think it's okay to understand  
9 what your payment plan would be.

10 Q. All right. Do you think that it would have  
11 been helpful for Ms. Speight to understand what  
12 her payment plan would be?

13 A. Yes, I agree.

14 Q. And do you know, as of the time of her  
15 termination, whether anybody had explained to  
16 her how she was going to be compensated, having  
17 moved into Servicing?

18 A. I don't know that.

19 Q. All right. You never told her, right?

20 A. No, I didn't.

21 Q. As far as you know, Mr. Lipson never told  
22 her?

23 A. I don't know.

24 Q. All right. Would you agree with me that  
25 knowing how you're going to be compensated would

1 be important for an employee to know?

2 A. Would it be important?

3 Q. Yes.

4 A. Sure.

5 Q. Do you think it might affect their morale?

6 A. I don't know.

7 Q. All right. You understand that the majority  
8 of Ms. Speight's previous compensation was in  
9 bonus and not in salary?

10 A. No, I don't know that.

11 Q. All right. Okay. I have a whole bunch of  
12 binders up there. I'm going to start going  
13 through some of them.

14 A. Can I close this one?

15 Q. You can close that.

16 I think I asked you a little bit  
17 before, do you recall Ms. Speight making a  
18 recommendation about her people moving around  
19 between Client Relations, which was your group,  
20 and Real Estate Solutions?

21 I don't think we have put that term out  
22 there yet, but Mr. Carp's group was known as  
23 Real Estate Solutions, correct?

24 A. Correct. Well, at that time it was, yes.

25 Q. If you would look at P-6.



1 A. (Witness complies.)

2 Q. Now, P-6, do you recognize this document?

3 A. Yes, I do.

4 Q. And this was an e-mail from Ms. -- well, the  
5 original e-mail was from Ms. Speight to you and  
6 to Mr. Carp labeled "Preliminary  
7 Recommendations."

8 And, first, she has "Client Relations,"  
9 which would be your group, and she lists ten  
10 people, and then "Real Estate Solutions," and  
11 she lists nine people, correct?

12 A. That's correct.

13 Q. Okay. Do you recall that you sought her  
14 recommendation prior to the e-mail, as to which  
15 members of the group would go to Client  
16 Relations and which would go to Real Estate  
17 Solutions?

18 A. If I asked her to prepare this?

19 Q. Yes.

20 A. I don't remember.

21 Q. Let's go back to your deposition.

22 A. Okay.

23 Q. Page 73. At your deposition, I said --

24 THE COURT: Give him a moment.

25 MR. SALMANSON: Line 16.

1                   Sorry, Your Honor.

2                   THE WITNESS: Thank you.

3           BY MR. SALMANSON:

4           Q.    "Q. I'm showing you what has been marked as  
5   P-6" --

6                   THE COURT: He still hasn't gotten  
7   there yet.

8                   MR. SALMANSON: Oh, I'm sorry.

9                   THE WITNESS: I'm there, Your Honor.

10                   THE COURT: All right.

11           BY MR. SALMANSON:

12           Q.    "Q. I'm showing you what has been marked as  
13   P-6, which is an e-mail string, commencing with  
14   an e-mail from Wanda to you and Mr. Carp  
15   entitled, "Preliminary Recommendations" and a  
16   response from you back to Wanda.

17                   "Do you recall discussing with Wanda  
18   prior to this e-mail seeking recommendations as  
19   to what members of her team would go to Client  
20   Relations and which would go to Real Estate  
21   Solutions?"

22                   And your answer was,

23                   "A. Yes."

24                   Does that help refresh your  
25   recollection that you sought her recommendation

1 in that regard?

2 A. I remember discussing it with her.

3 April 26th would have been an earlier  
4 conversation. At that point, we would have been  
5 talking about identifying employees and their  
6 strengths, so I guess it does help me to  
7 remember.

8 Q. And ultimately, members of her team were  
9 split between those two areas, correct?

10 A. I believe so, yes.

11 Q. All right. You actually generally followed  
12 Wanda's preliminary recommendations on how the  
13 team was split up, correct?

14 A. I don't remember. I probably did.

15 Q. All right. You see that Ms. Speight's name  
16 is on the Real Estate Solutions side, rather  
17 than the Client Relations side, correct?

18 A. I saw that, yes.

19 Q. Okay. At least as a preliminary  
20 recommendation, you actually didn't have a  
21 problem with that, did you?

22 A. I don't know if I had a problem with it at  
23 all. I would have -- based on this, I asked for  
24 her recommendation, so I was open to receiving  
25 her recommendations.

1 Q. Okay. And ultimately, you decided that you  
2 would rather have at least Ms. Speight on the  
3 Client Relations team, rather than on the Real  
4 Estate Solutions team, however they were split  
5 up, correct?

6 A. That's correct.

7 Q. Okay. You never told anybody that Wanda's  
8 preliminary recommendations were inappropriate,  
9 did you?

10 A. No.

11 Q. And you didn't have any discussions with  
12 Mr. Lipson about these preliminary  
13 recommendations, did you?

14 A. I don't recall. I have no idea.

15 Q. Okay. You don't recall Mr. Lipson objecting  
16 to Ms. Speight's preliminary recommendations?

17 A. No. I don't think Mr. Lipson would have  
18 been familiar with some of the names, so I don't  
19 think he would have a basis for that.

20 Q. So he wouldn't have had a basis for thinking  
21 that her preliminary recommendations were  
22 inappropriate?

23 A. I think at this time we were still trying to  
24 figure out what the department was doing.

25 Q. All right. And so, to answer my question,

1     you don't think that Mr. Lipson had any basis  
2     for assuming that her preliminary  
3     recommendations were inappropriate?

4             MR. BANKS:  Objection, Your Honor.  
5     That calls for speculation.

6             THE COURT:  It does, unless there was  
7     some exact statement made to that effect.

8             MR. SALMANSON:  I'll try to lay a  
9     foundation, a little bit.

10            THE COURT:  Rephrase your question.

11     BY MR. SALMANSON:

12     Q.  Mr. Lipson was relying on you to tell him  
13     what was going on, in terms of the transition  
14     with Ms. Speight's group, correct?

15     A.  Part of my responsibility would have been  
16     that, yes.

17     Q.  Okay.  Do you know if anybody else was  
18     feeding Mr. Lipson that information?

19     A.  I don't know.

20     Q.  So, based on what you were telling him, you  
21     hadn't told him anything that would lead him to  
22     believe that Mr. Lipson could conclude that  
23     Ms. Speight's preliminary recommendations were  
24     inappropriate?

25     A.  Well --

1 THE WITNESS: Could you read that back  
2 to me, please?

3 (Whereupon, the court reporter read  
4 back the last question.)

5 THE WITNESS: No, I wouldn't.

6 BY MR. SALMANSON:

7 Q. Do you recall ever telling Mr. Lipson that  
8 Ms. Speight wanted to move half of the assets  
9 that she was managing into Real Estate  
10 Solutions?

11 A. No.

12 Q. To your recollection, did Ms. Speight ever  
13 make the recommendation to move half of her  
14 assets into Real Estate Solutions?

15 A. Half of the assets?

16 Q. Yes.

17 A. I'm not sure that I understand. Wanda's  
18 group was responsible for managing a particular  
19 facet of the assets, so, to move them, I'm not  
20 sure I understand.

21 Q. Okay. Fair enough, fair enough.

22 Do you recall Ms. Speight ever  
23 suggesting that the management of the assets,  
24 half of the assets, should be moved into Real  
25 Estate Solutions?

1 A. I think we had that conversation, yes.

2 Q. Okay. And do you recall whether that was  
3 her idea?

4 A. I have no idea.

5 Q. Was that something that was out on the table  
6 as a possibility?

7 A. I think, as we understood what the  
8 department did, part of that was understanding  
9 the portfolio, so it would have been part of the  
10 discussions.

11 Q. Hmm. And whoever suggested the potential of  
12 moving half the management or half of the assets  
13 into Real Estate Solutions, that would have been  
14 consistent with the tenor and tone of the  
15 discussions that you were having, correct?

16 A. Yes, as I sit here today, I would say it  
17 would be. I don't remember specifically having  
18 those conversations, but I remember discussing  
19 the assets and the management thereof, so I  
20 think we would have been discussing quite a bit  
21 at that time.

22 Q. Okay. Is it fair to say that there were a  
23 lot of ideas being put out on the table?

24 A. Yeah, I think so.

25 Q. Were some of those ideas being put out on

1 the table by Ms. Speight?

2 A. Certainly.

3 Q. And do you recall discussing with  
4 Ms. Speight issues related to the fact that she  
5 was short-staffed?

6 A. Do I remember discussing with her issues  
7 related to her being short-staffed?

8 Q. Yes.

9 A. I know we were talking about personnel at  
10 every one of our meetings, so part of the design  
11 of all of those meetings was to identify where  
12 we could bring assistance from her services  
13 operation.

14 Q. Do you recall that there had been a set of  
15 assets that had been asset-managed out in Denver  
16 that were being transferred, or had just before  
17 she joined her group, within a couple of weeks  
18 or months, been transferred into her group?

19 A. I know there was a lot of movement back  
20 then, so I don't know if I knew the exact assets  
21 you were referring to at that point.

22 Q. If I use the term "SPR" or "SPGR" from the  
23 loan portfolio, does that sound familiar?

24 A. Yes.

25 Q. Okay. Do you recall Ms. Speight keeping you



1 informed about how she was going to try and  
2 reassign those assets?

3 A. Not specifically, no.

4 Q. Do you ever recall being advised that she  
5 didn't believe that she had the full personnel  
6 to take all of those assets in and manage them  
7 within her own group?

8 A. Do I remember her saying that?

9 Q. Yes.

10 A. At one point I remember getting an e-mail to  
11 that effect. I don't remember what time,  
12 though.

13 Q. Do you recall being advised that Mr. Carp  
14 had offered the assistance of Mr. Lauerman who  
15 worked for him and his people to assist her, at  
16 least in part, with that portfolio?

17 A. I know there was a lot of camaraderie,  
18 should I say, between departments to facilitate  
19 the transition, so I do recall Tony Lauerman  
20 being involved.

21 Q. If I can direct your attention to P-9.

22 A. (Witness complies.)

23 Q. Just take a minute to look through, and then  
24 let me know when you're ready.

25 A. Okay.

1 Q. Now, this e-mail string relates to the  
2 orphan loan portfolio, correct?

3 A. Yes, it does.

4 Q. And Ms. Speight had reached out to  
5 Mr. Lauerman to seek his assistance in having  
6 some of his people asset-manage the orphan loan  
7 portfolio, correct?

8 A. Yes.

9 Q. And there was nothing wrong with her doing  
10 that, correct?

11 A. No.

12 Q. Somehow on May 4th, according to this  
13 e-mail, Ms. Speight writes with a CC to you and  
14 to -- or sorry, she writes to you and to Mr.  
15 Carp, with a CC to a Patrick Vahey and a Nathan  
16 Perry in Colorado, and says, "can someone please  
17 let us know what is happening with the SPG  
18 loans? Up until a few minutes ago, we were  
19 under the understanding that Jackie and Julie  
20 would be picking up these assets.

21 "Jackie called Nathan to tell him that  
22 these loans would be going to the Salt Lake City  
23 Master Servicing staff, but that will not happen  
24 for awhile. If the plans have changed, please  
25 communicate the plan. Patrick has other plans

1 for Nathan and his staff, so there's no interim  
2 coverage.

3 "Patrick, please comment on  
4 availability. My concern is that these assets  
5 require significant hands-on coverage."

6 Do you recall whether, in fact, up  
7 until 11:21, or a few minutes before then, on  
8 May 4th, that Mr. Lauerman's group was picking  
9 up the Asset Management responsibilities for  
10 these assets?

11 A. No, I don't recall that.

12 Q. Let me ask you a question.

13 Do Asset Management responsibilities  
14 go hand in hand with risk ratings for those  
15 assets?

16 A. Do Asset Management responsibilities --  
17 well, part of the Asset Management  
18 responsibilities would do that, yes.

19 Q. So whoever had the responsibility for Asset  
20 Management would also be responsible for doing  
21 the risk ratings of those assets, correct?

22 A. Well, yes, in the terms that we are  
23 discussing today, yes. Our business uses Asset  
24 Management for different things.

25 Q. In response to that e-mail, Mr. Vahey comes

1 back and explains that he really would prefer  
2 Nathan Perry not to be involved in the asset  
3 management, and says, "that being said, I don't  
4 want to put the company at risk by neglecting  
5 the assets. So if there's absolutely no one  
6 else to handle, we'll figure out something else  
7 with Nathan. Hope this helps. Please let me  
8 know if you have any questions."

9 Would you agree with Mr. Vahey's  
10 assessment, that if there isn't somebody to do  
11 the risk ratings in an appropriate -- well, I  
12 don't want to put words in your mouth -- that if  
13 you neglect the assets, you could put the  
14 companies at risk?

15 A. So you want me to answer if we neglect  
16 assets --

17 Q. No, no, no, no, no.

18 A. No, whether or not --

19 Q. Sorry, let me ask it again.

20 A. I'm sorry.

21 Q. That's okay. It probably won't be the first  
22 time.

23 Would you agree with Mr. Vahey that if  
24 the assets were neglected, that that would put  
25 the company at risk?

1 A. Well, certainly. I guess I'm trying to  
2 figure out what he means by "neglected," but,  
3 yes.

4 Q. Now, Ms. Speight then chimes in back to  
5 Mr. Vahey and to you and to Mr. Carp, the CC to  
6 Mr. Perry and Mr. Lauerman, and says, "Mark and  
7 Mike."

8 Now, "Mark," you interpret as you, I  
9 assume?

10 A. Yes.

11 Q. And "Mike," just because there are a lot of  
12 Mikes between the lawyers and Mr. Lipson and  
13 Mr. Carp, that "Mike" is Mike Carp, right?

14 A. That's right.

15 Q. "Mike and Mark, I have attempted to be clear  
16 with you over the past 30 days that I don't have  
17 staffing to pick up this portfolio."

18 Any reason to believe that that  
19 statement is not correct?

20 A. Well, as of May 4th, I think Wanda had  
21 reported to me for three days, so I don't know  
22 at this point if I understood what her staff was  
23 doing at that time, that I could agree with  
24 that, or not.

25 Q. Had you been having conversations with

1 Ms. Speight during the month of April about what  
2 her staffing issues were?

3 A. We were having many conversations during the  
4 time after the decision was made for her  
5 department to move over to Servicing.

6 Q. And some of those discussions related to  
7 staffing, correct?

8 A. They would, yes.

9 Q. Okay. Her next sentence says, "The  
10 corporation's balance sheet is at risk if  
11 there's slippage in credit quality and no one is  
12 monitoring performance. Again, please let us  
13 know what is the plan."

14 Do you agree with Ms. Speight that the  
15 corporation's balance sheet could be at risk if  
16 there's a slippage in credit quality and no one  
17 is monitoring performance?

18 A. If that were just a factual statement --

19 Q. Yes.

20 A. -- I think that would be an accurate  
21 statement, yes.

22 Q. And part of monitoring the performance is  
23 performing the risk ratings, correct?

24 A. That would be part of it, yes.

25 Q. It's a pretty strong statement on

1 Ms. Speight's part, would you agree?

2 A. Yes.

3 Q. And you didn't have a problem with her  
4 sending this e-mail and expressing that as she  
5 did, did you?

6 A. I don't recall how I felt about it at the  
7 time. I think I would have been a little  
8 surprised that she's tried to be clear with us.

9 Q. Would you turn to Page 102 of your  
10 deposition?

11 A. I'm there.

12 Q. Did the e-mail, in your mind, raise any  
13 concerns related to her performance?

14 A. No.

15 Q. And do you recall whether you ever responded  
16 to Ms. Speight's question, specifically about  
17 these assets, when she said, "Again, please let  
18 us know what is the plan"?

19 A. If I ever responded? No, I don't think I  
20 ever physically sent her an e-mail. I'm sure we  
21 would have discussed it.

22 Q. As you sit here today, do you have any  
23 recollection of discussing what the plan was for  
24 the SPG portfolio after May 4th and prior to her  
25 termination?

1 A. Specifically, as it relates to this  
2 portfolio?

3 Q. Yes.

4 A. No. Generally, yes.

5 Q. Would you look at P-11?

6 A. (Witness complies.)

7 Q. Tell me when you have had a chance to look  
8 through that.

9 A. Okay.

10 Q. If you would look on the first page, there's  
11 an e-mail from Julie Gschwind to Ms. Speight,  
12 somebody named Jackie Brome, Justin Snarponis,  
13 Curt Spaugh, and Tony Lauerman.

14 Julie writes, "Wanda, I understand Mark  
15 McCool's group will be handling all the orphan  
16 loans and that Special Servicing will be  
17 transferring them in the next week to ten days.

18 "In the meantime, I understand Nathan  
19 Perry is continuing to handle these loans. In  
20 light of this, is it appropriate for us to be  
21 trained?"

22 Ms. Speight forwards that e-mail, then,  
23 in response to Ms. Gschwind, with a CC to you  
24 and to Mr. Carp, and, among others, cc's  
25 Mr. Lauerman, and he is an individual in Special



1     Servicing, correct?

2     A.   That's correct.

3     Q.   And he was reporting to Mr. Carp, correct?

4     A.   I believe so, yes.

5     Q.   And to Jackie Brome and Robert Ballard.

6             Do you know who Robert Ballard is?

7     A.   Yes, I do.

8     Q.   What was his position at the time?

9     A.   I think at the time he was Chief Credit  
10    Officer.

11    Q.   And Mr. Hohenleitner, who is he?

12    A.   He worked in the Credit Department.

13    Q.   So Mr. Ballard would have been above  
14    Mr. Hohenleitner?

15    A.   Yes, I believe so.

16    Q.   Wanda writes, "Thanks for the feedback,  
17    Julie. Mark/Mike," -- and I think we can agree  
18    that Mark is you, and Mike is Mike Carp -- "the  
19    Credit Department will be providing training the  
20    risk rating process. The next cycle will begin  
21    in late May.

22             "If Julie and Jackie are not the  
23    appropriate individuals to perform the risk  
24    rating of the orphan SPG loans, please identify  
25    the appropriate person(s)."

1           Is it fair to say that, as of May 9th,  
2     you were aware that the SPG orphan loan  
3     portfolio was going into Mr. Lauerman's group,  
4     and that some people in his group were going to  
5     be trained to do the risk rating?

6     A.   That it was going into Mr. Lauerman's group?

7     Q.   Right.

8     A.   I don't know if I do recall that.

9     Q.   And --

10    A.   I mean, it's in the e-mail, but I don't know  
11    if I agreed with it at the time.

12    Q.   Okay. You actually then respond, and is it  
13    fair to say that you were put on notice that at  
14    least there was a thought in that regard?

15    A.   Yes.

16    Q.   In fact, you then follow-up with Ms. Speight  
17    and Mr. Carp and say, "Let's talk about this  
18    tomorrow. What times are you available?"

19    Correct?

20    A.   That's correct.

21    Q.   So you wanted to figure out whether it was  
22    the right thing to do to send the SPG loan  
23    portfolio over to Mr. Lauerman's group or  
24    somehow handle it within your group; is that  
25    fair to say?

1 A. Yes. Again, it was all part of the larger  
2 transition.

3 Q. All right. Do you recall whether you ever  
4 had the opportunity to discuss where those  
5 orphan loans should go?

6 A. I'm sure we did.

7 Q. All right. Do you recall that, except for  
8 the subset loans, the vast majority of the SPG  
9 portfolio actually came within Ms. Speight's  
10 bailiwick?

11 A. Do I recall that?

12 Q. Yes.

13 A. Yes, I do.

14 Q. Okay. And this was just a small subset of  
15 those loans, correct?

16 A. Yes, I believe so.

17 Q. In the conversations about discussing  
18 staffing, you learned over the course of the  
19 time period from the end of March until her  
20 termination that Ms. Speight had lost several  
21 important individuals within her group, correct?

22 A. I don't know the time period in which she  
23 lost the individuals. I know that some people  
24 did resign from the group.

25 Q. And do you recall any of their names?

1 A. Two that come to mind would be Orion Hack  
2 and Chuck Mathews.

3 Q. Do you recall that Mr. Suri also left her  
4 group?

5 A. I don't know that name.

6 Q. If I told you that he was the person who had  
7 been Asset Management in the Canadian loan  
8 portfolio, do you recall, even if you don't  
9 recall his name, that the person who had managed  
10 that portfolio also left her group?

11 A. I believe so, yes. I don't know what the  
12 time frame of his departure was.

13 Q. You ultimately didn't determine to whom  
14 Ms. Speight would be reporting until May 12th;  
15 is that correct?

16 A. I think you said that date earlier. I don't  
17 know the exact date, but it was around that  
18 time.

19 Q. Okay. And do you recall having a meeting  
20 with Ms. Speight on that date to discuss to whom  
21 she would be reporting, and generally the  
22 structure of the way that you determined the  
23 transition should take place?

24 A. I think it might have been a phone call, but  
25 I remember speaking with her. I can't remember

1 if it was a meeting or a call.

2 Q. Okay. Do you recall that during this time  
3 period Mr. Carp was based in Dallas, correct?

4 A. He still is, yes.

5 Q. All right. And so if you met with  
6 Ms. Speight together, you would generally --  
7 when you were talking about moving the groups  
8 around or how this was going to work, Mr. Carp  
9 and you and Ms. Speight would be on the phone  
10 calls together, correct?

11 A. Um.

12 Q. Let me rephrase that, because --

13 A. Okay.

14 Q. Mr. Carp would generally attend meetings  
15 with you and Ms. Speight on the phone, correct?

16 A. Correct, he would be on the phone.

17 Q. Sometimes all three of you would be on the  
18 phone, and sometimes you and Ms. Speight would  
19 be face to face?

20 A. That is correct.

21 Q. And do you recall, during any of those  
22 meetings among the three of you, whether  
23 Ms. Speight ever said anything inappropriate  
24 or -- let's start with inappropriate.

25 A. I don't -- no, I don't think so. Not that I

1 recall.

2 Q. Did she ever, during those meetings, say  
3 anything that you thought was insubordinate?

4 A. No, I don't think so.

5 Q. Okay. Did it seem like she was engaged in  
6 the discussions when you had those meetings?

7 A. The discussions with Michael Carp?

8 Q. Yes.

9 A. Yes.

10 Q. Okay. Do you recall the May 12th meeting  
11 being a very productive meeting?

12 A. I don't remember that particular meeting,  
13 but I know we had productive meetings.

14 Q. Would you say that up until May 23rd -- and  
15 we're certainly going to get to the May 23rd  
16 meeting --

17 A. I'm sure we will.

18 Q. -- that you basically were having productive  
19 dialogues with Ms. Speight and having productive  
20 meetings?

21 A. At varying productivity, I would say.

22 Q. All right. Now, eventually, after the  
23 May 23rd meeting, you did have some concerns,  
24 correct, based on what happened in that meeting?

25 A. Yes.

1 Q. And at the time, on May 23rd, either that  
2 day or shortly thereafter, you wrote a memo to  
3 the file to document those concerns, correct?

4 A. Yes, I did.

5 Q. If you can turn to P-30.

6 A. (Witness complies.)

7 Q. P-30 is the memo that you created after the  
8 May 23rd meeting, correct?

9 A. That is correct.

10 Q. And your point in writing this memo was to  
11 document all the concerns that you had about  
12 Ms. Speight at that time, correct?

13 A. I think my point was to memorialize my  
14 thoughts.

15 Q. Okay. And your concerns?

16 A. That would have been part of my thoughts.

17 Q. "Background. Integration announced, Mike  
18 Lipson meets with team in Horsham, New York on  
19 the phone. Wanda and I meet, cordial, but  
20 superficial meeting."

21 Would you agree with me that the first  
22 time you met with Ms. Speight it was, in  
23 essence, to exchange pleasantries, you didn't  
24 really talk details?

25 A. Yes, I would agree.

1 Q. And when you describe it as a superficial  
2 meeting, that's not any fault on Ms. Speight's  
3 part?

4 A. No, certainly not.

5 Q. Okay. It says, "Mike Carp and I meet with  
6 the team in Horsham, New York on the phone, two  
7 times. Mike and I meet with Don Irwin and Sue  
8 Morrow, a few employees individually. Mike and  
9 I meet with Chuck Mathews and Henry Yabroud, "  
10 Y-A-B-R-O-U-D-Y, "reviewing employees  
11 individually. Meetings with Wanda continued.  
12 Discussed with Marla the team structure and  
13 employee overview concerns and questions."

14 Now, who is Marla?

15 A. That would be Marla Berger.

16 Q. Okay. Marla Berger had been one of the  
17 people who had previously had oversight of  
18 Wanda's group, correct?

19 A. Correct.

20 Q. Do you recall what concerns and questions  
21 you discussed with Ms. Berger?

22 A. No. I think they would have been, you know,  
23 what should I focus on first for the transition,  
24 and, you know, what are the priorities within  
25 the department to help me come up with an



1 appropriate plan.

2 Q. And it says, "Meet with Wanda and Mike."

3 Wanda, of course, being Ms. Speight,  
4 Mike being Mike Carp, not Mike Lipson, correct?

5 A. That would be correct, yes.

6 Q. -- "to identify specific tasks to be  
7 assigned to Real Estate Solutions and Client  
8 Services. Very constructive meeting."

9 Do you recall that that was part of the  
10 meeting in mid May, whether it's May 12th or  
11 another date?

12 A. That's the right time frame.

13 Q. Okay. It wasn't prior to May 1st, correct?

14 A. No, I don't believe so.

15 Q. And do you recall how long that meeting  
16 occurred?

17 A. The duration of the meeting?

18 Q. Yes.

19 A. No. We had a lot to talk about, 45 minutes  
20 to an hour, maybe.

21 Q. The purpose of that meeting was to try and  
22 get started on -- I think you used the term  
23 "granular level."

24 Was it to start thinking about, on a  
25 granular level, how the assignments should be

1 made and who should go where?

2 A. Yes.

3 Q. And would you agree with me that you  
4 couldn't possibly have had a very constructive  
5 meeting unless Ms. Speight was an active  
6 participant in that meeting?

7 A. Yes.

8 Q. All right. And she was sharing her views  
9 with you about what the appropriate things to do  
10 were?

11 A. Yes.

12 Q. Did she seem engaged?

13 A. Yes, yes. I remember that.

14 Q. She seemed sincere?

15 A. As I sit here today, yes, I would say so.

16 Q. Can you think of anything that happened in  
17 that May 12th meeting that would make you  
18 question her commitment to moving forward?

19 A. No.

20 Q. And then it says, "You offered Wanda the  
21 opportunity to continue to manage the Asset  
22 Management team, discussed opportunities  
23 available in Real Estate Solutions. She  
24 accepted the position."

25 Now, do you recall how the discussion

1 about opportunities and Real Estate Solutions  
2 came up?

3 A. No. I'm trying to figure out what I meant  
4 by that, but, no, I don't remember how it came  
5 up.

6 Q. Do you recall whether you discussed with  
7 Ms. Speight whether maybe she could end up in  
8 Real Estate Solutions, as opposed to under your  
9 bailiwick?

10 A. I think at this point we had decided that it  
11 was appropriate for her to continue to manage  
12 that team with me.

13 Q. And before you had told her that decision,  
14 there wouldn't have been anything wrong with her  
15 discussing the possibility of being in Real  
16 Estate Solutions?

17 A. No.

18 Q. Now, you then set up a meeting on May 23rd.  
19 Well, let me stop there.

20 There's nothing in this document, which  
21 I think you said was to document your thoughts,  
22 to suggest that prior to May 23rd you had  
23 concerns about Ms. Speight's performance?

24 A. Well, there's nothing in this document, no.

25 Q. And there's nothing's prior to May 23rd that

1 suggests that you were questioning her  
2 commitment?

3 A. In this document?

4 Q. Yes.

5 A. There's nothing in this document.

6 Q. And there's nothing in any other document  
7 you wrote to the file that suggests --

8 A. Not to the file, no.

9 Q. Okay. Is there anything that you wrote to  
10 anybody else?

11 A. No, I don't believe so.

12 Q. All right. You didn't write down in a  
13 diary?

14 A. No, I don't recall.

15 Q. You didn't write an e-mail to Mr. Lipson?

16 A. No.

17 Q. You didn't write an e-mail to Mr. Carp?

18 A. I didn't write anything, no.

19 Q. You didn't write to Ms. Berger?

20 A. I don't think I wrote to anybody about my  
21 concerns.

22 Q. And did you ever have a discussion with  
23 Ms. Berger, prior to May 23rd, about Wanda's  
24 commitment to the transition or concerns you had  
25 about Ms. Speight?

1 A. With Ms. Berger?

2 Q. Yes.

3 A. No, I don't believe so. Not with her.

4 Q. You don't recall having any of those  
5 discussions with Mr. Carp, do you?

6 A. No, not offhand.

7 Q. All right. To what extent do you recall  
8 having any discussions with Mr. Lipson about  
9 your concerns relating to Ms. Speight prior to  
10 May 23rd?

11 A. I remember discussing with Mr. Lipson the  
12 fact that I was becoming increasingly concerned  
13 about her commitment.

14 Q. Okay. And when do you think that you had  
15 that conversation?

16 A. Mid to late May.

17 Q. So sometime after the May 12th meeting, or  
18 whenever that meeting was?

19 A. Correct, yes. After the May 12th meeting,  
20 yes.

21 Q. Do you know whether it was after the  
22 May 23rd meeting?

23 A. It was certainly before the May 23rd  
24 meeting.

25 Q. Okay. What happened between May 12th and

1 May 23rd that made you say, Mr. Lipson, I have  
2 some concerns about her commitment?

3 A. Well, we were having our continual meetings,  
4 our ongoing meetings, and Wanda was becoming  
5 disengaged and disinterested, I would say.

6 Q. And you're saying that occurred between  
7 May 12th and May 23rd?

8 A. Yes.

9 Q. How many meetings do you think you had  
10 between May 12th and May 23rd?

11 A. It had to be -- I don't know. We were  
12 probably talking about almost every day at that  
13 point.

14 Q. Now, why didn't you put that down in the  
15 memo? You're writing the memo around May 23rd,  
16 correct?

17 A. Correct.

18 Q. And this is to document your concerns about  
19 Ms. Speight?

20 A. No. It was to document my thoughts on that  
21 particular meeting that had occurred on  
22 May 23rd.

23 Q. Do you recall, prior to the May 23rd  
24 meeting, Ms. Speight reaching out to you to ask  
25 if there were certain things that were going to

1 be on the agenda, so that she could be prepared  
2 for them at the meeting?

3 A. I recall an e-mail to that effect.

4 Q. All right. If you will look at P-21.

5 A. (Witness complies.)

6 Q. This is an e-mail from Ms. Speight to you,  
7 with a CC to Madeline O'Brien who is your admin,  
8 correct?

9 A. She was at that time, yes.

10 Q. And it says, "Accepted Further Drill Down on  
11 Integration."

12 The "Further Drill Down on Integration"  
13 was the May 23rd meeting, correct?

14 A. I don't know. We were having many meetings  
15 at that time.

16 Q. Do you recall that the purpose of the  
17 May 23rd meeting was to have a further drill  
18 down on the integration?

19 A. The purpose of the 23rd meeting was, yes.

20 Q. All right. And she says, Please let me know  
21 the specific areas I should be prepared to  
22 discuss." Correct?

23 A. I'm sorry?

24 Q. She was asking you to please let her know  
25 the specific areas she should be prepared to

1 discuss, correct?

2 A. Yes. That's in the e-mail.

3 Q. And do you recall whether you ever responded  
4 to the e-mail?

5 A. I don't. Yeah, I don't know if this is just  
6 an automatic acceptance of the meeting plan, or  
7 if it's a separate e-mail.

8 Q. All right. Go back to P-14.

9 A. (Witness complies.)

10 Q. This is an e-mail string related to a  
11 certain set of loans. And Wanda writes to you  
12 on May 11th, "Subject: FW: Construction  
13 Management Fees. Mark, there is a construction  
14 management. Where does this go? PLG or  
15 Services?"

16 It's true, isn't it, that you would not  
17 have expected Ms. Speight to not know the answer  
18 to that question prior to asking it of you,  
19 correct?

20 A. I'm sorry, I was reading.

21 Q. I'm sorry. I forgot to say let me know when  
22 you're ready.

23 Are you ready now?

24 A. I am. Sorry about that.

25 Q. It says, "Mark, there's a construction



1 management. Where does this go? PLG or  
2 Services?"

3 And you would not have expected her to  
4 know the answer to that prior to asking the  
5 question, correct?

6 A. That would have been something that we were  
7 trying to figure out in the transition.

8 Q. And there was nothing wrong with her sending  
9 out that e-mail to you to ask that question,  
10 correct?

11 A. No.

12 Q. If you look at P-16.

13 A. (Witness complies.)

14 Q. It begins with an e-mail from Ms. Speight to  
15 Clare Dooley, with a CC to you and Mr. Carp.

16 Subject is "Scheduling a demo of the  
17 UWAM." Ms. Speight writes, "Hi, Clare. At  
18 Mark's suggestion" -- I assume it's you,  
19 correct?

20 A. Yes.

21 Q. -- "I would like to schedule a time next  
22 week to show you the financial statement  
23 analysis tool utilized by PLG. The tool is  
24 known as the Underwriting asset management  
25 model, (UW-AM). It is populated by the

1 underwriter analyst during the loan approval  
2 process, then transferred to Asset Management  
3 for tracking periodic (monthly or quarterly)  
4 financial reporting and analysis. If you could  
5 e-mail a few times next week, I will set a time  
6 up."

7 Ms. Dooley then responds to  
8 Ms. Speight, and Ms. Speight then responds to  
9 Ms. Dooley.

10 This e-mail was basically her following  
11 up to your instructions, correct?

12 A. Yes.

13 Q. And you asked her to do it, in part, so that  
14 you could understand her group's functions and  
15 figure out how you could leverage the Servicing  
16 Department to assist her in that function,  
17 correct?

18 A. Yes.

19 Q. Do you recall that, in fact, that was one of  
20 the things that you discussed in the meeting,  
21 which I'll represent to you occurred on  
22 May 12th?

23 A. Yes. That probably came up in the meeting.

24 Q. Okay. So if she started sending the e-mail  
25 on May 12th at 3:24, she was doing almost an

1 immediate follow-up to your meeting, correct, as  
2 you requested?

3 A. Same day, yes.

4 Q. If you could turn to P-17.

5 A. (Witness complies.)

6 Q. That same day, 3:47 in the afternoon, she  
7 forwards to you --

8 A. I'm sorry, you don't want me to read all of  
9 these?

10 Q. No, no, sorry. We're just going to focus on  
11 the first page.

12 A. I'm ready then.

13 Q. Okay. She forwards to you and to Mr. Carp a  
14 pretty big attachment -- that we have decided  
15 that you don't want to read right now, right?

16 A. Yes.

17 Q. It says, "Asset Manager Job Functions Doc.  
18 As we discussed, please see attached."

19 And what is attached is a document  
20 labeled "Asset Management: Primary Job  
21 Functions."

22 It goes through and it talks about  
23 "Asset Surveillance," "Performing Monitoring  
24 Activities," "Special Request Activities," Loan  
25 Maturity Activities,"

1 "Securitization/Disposition Activities," et  
2 cetera.

3 Correct?

4 A. Correct.

5 Q. And this, again, was something that you had  
6 asked about, whether she could give something to  
7 you at the meeting earlier that day, correct?

8 A. Yeah. I don't know if it was myself or  
9 Michael Carp that asked for it.

10 Q. This was a very useful document; am I  
11 correct?

12 A. I don't know if it was or wasn't. It was  
13 something that we needed to understand the  
14 department, so, I mean, without reviewing it, I  
15 can't remember if it was useful or not.

16 Q. Okay. But it was something that you needed  
17 to know in order to understand her department?

18 A. Yes.

19 Q. Prior to her joining your department, did  
20 you have any sort of understanding of what her  
21 department did?

22 A. Yes, certainly.

23 Q. Okay. And did you understand sort of the  
24 nitty-gritty of how her team asset-managed  
25 compared to how Servicing did it?

1 A. Yes, I would say so.

2 Q. Had you ever done any risk ratings yourself?

3 A. Not in -- have I done them? I've been in  
4 the meetings. I could do one. I don't think I  
5 ever had the responsibility of actually  
6 performing it, so I would say no.

7 Q. Have you ever had the jurisdiction over  
8 people who were in charge of doing asset risk  
9 ratings?

10 A. Well, Wanda's group would have been --

11 Q. Right. The first time.

12 A. Yes. Within Capmark Finance or GMAC CM.

13 Q. Okay. And do you recall discussing the  
14 substance of the memo, as to what her group's  
15 functions were, after she gave you the memo?

16 A. That would have been part of all the  
17 meetings we were having, understanding the  
18 roles.

19 Q. And you can't recall Ms. Speight being  
20 unable to address any questions you had related  
21 to any of the descriptions set forth in that  
22 memo, correct?

23 A. I'm sorry, could you repeat that for me?

24 Q. Sure. You don't recall Ms. Speight having  
25 the inability to address questions that arose

1 out of this memo?

2 A. Actually, I did. I don't know if they arose  
3 out of this memo, but --

4 Q. Can you turn to your deposition, Page 124,  
5 starting at Line 9.

6 A. (Witness complies.)

7 Q. I asked you if you recalled receiving the  
8 memo. You said,

9 "A. Well, I remember seeing the  
10 document."

11 A little bit later, on Page 125, Line  
12 14, I say,

13 "Q. Do you recall reviewing the  
14 document with Ms. Speight?"

15 At first you say, "No," and then --

16 MR. BANKS: Can I get where you are?

17 MR. SALMANSON: Sure, 125, Line 14.

18 MR. BANKS: I see. My apologies.

19 BY MR. SALMANSON:

20 Q. "Q. Do you recall reviewing the document  
21 with Ms. Speight?" And you say,

22 "A. No." And then you say "Actually,  
23 yes, I do recall."

24 "Q. And when did you review the  
25 document with Ms. Speight?

1           "A.     That I don't recall. I know it  
2     was during the series of meetings that we were  
3     holding during the same period."

4           Then later on, I said,

5           "Q. Do you recall Ms. Speight being  
6     unable to answer any questions that anybody else  
7     raised in the review of the document?"

8           And your answer was,

9           "A. No. I thought there was a  
10    different document, a checklist-type document."

11          And then I think we agreed that that  
12    checklist-type document was a document that was  
13    later prepared on May 23rd, correct?

14    A. Yeah, I recall that distinction being made.

15    Q. So, at least as to any discussions that  
16    arose out of the P-17 document, Ms. Speight, as  
17    far as you can recall, was able to answer your  
18    questions, if you had any, from your review of  
19    that document?

20    A. Yeah. I don't know that I had any questions  
21    on this particular document.

22    Q. Can you turn to the next document, P-18?

23    A. (Witness complies.)

24    Q. Let me know when you're ready.

25    A. Okay.

1 Q. And this e-mail is in relation to Orion  
2 Hack, correct?

3 A. That's correct.

4 Q. And Ms. Speight is writing an e-mail on  
5 May 15th to someone named Sal Tarsia,  
6 Ms. Berger, CC to Mr. McCool and Mr. Carp.

7 Mr. Hack had decided that he wanted to  
8 go into Underwriting, correct?

9 A. Well, based on this, yes.

10 Q. Is that consistent with your recollection?

11 A. I couldn't remember the department, but,  
12 yes.

13 Q. Okay. And Ms. Speight says, "Orion just  
14 stopped in my office and asked if it would be  
15 okay to set a start date in underwriting for  
16 June 26th. No replacement has been identified  
17 at this time.

18 "(Mark, please let me know otherwise.)  
19 My concerns are having coverage for the 2Q risk  
20 rating, (should be wrapped up by June 21st) and  
21 coverage on his loans targeted for the CDO,  
22 (early July?)"

23 Do you agree that, as of May 15th, no  
24 replacement had been identified for Mr. Hack's  
25 portfolio?



1 A. Not that I was aware of, no.

2 Q. And would you have responsibility for  
3 ultimately determining who that replacement  
4 would be?

5 A. I think it would be up to Wanda to make a  
6 recommendation to me, and I would probably agree  
7 or disagree.

8 Q. And just so we're clear, Ms. Speight didn't  
9 actually have the power to hire a replacement on  
10 her own, correct? She didn't have the authority  
11 to do that?

12 A. I would agree with that, yes.

13 Q. So she would have had to have gotten your  
14 approval or somebody else's approval for the  
15 replacement?

16 A. For a new hire, yes.

17 Q. And if it were an internal transfer of hire,  
18 that was a possibility, too, right?

19 A. It would have been a possibility, yes.

20 Q. Is it true that, as of May 15th,  
21 Ms. Speight, to your recollection, no  
22 replacement had been identified as of May 15th?

23 A. Yeah, again, not that I'm aware of.

24 Q. Do you recall whether you ever told  
25 Ms. Speight otherwise when she said, "Mark,

1 please let me know otherwise"?

2 A. I doubt I would have.

3 Q. Do you know whether a replacement was  
4 identified before Ms. Speight's termination on  
5 May 26th?

6 A. I have no idea.

7 Q. There was nothing wrong with Ms. Speight  
8 reaching out to the individuals on this e-mail  
9 and expressing her concerns about replacement  
10 for Mr. Hack?

11 A. No.

12 Q. Do you recall who Mr. Tarsia is?

13 A. He was -- I'm not sure of his title, but he  
14 was maybe a head underwriter, which is a person  
15 responsible for analyzing the loans.

16 Q. So he would have been in the Underwriting  
17 Department --

18 A. Correct.

19 Q. -- with Mr. Hohenleitner?

20 A. No. It would have been -- Mr. Hohenleitner  
21 was in the Credit Department. Underwriting is a  
22 team that looks at a proposal on whether or not  
23 we're going to make a loan.

24 Q. And there's nothing wrong with her CCing the  
25 Underwriting Department about a staffing issue

1 related to her group?

2 A. Well, no. I think if they were trying to  
3 figure out a date when Orion would move over to  
4 the group, that's fine.

5 Q. So she's keeping him apprised because  
6 ultimately he's going to be getting Mr. Hack,  
7 correct?

8 A. I would assume so, yes.

9 Q. Look at P-19.

10 A. (Witness complies.)

11 Q. Let me know when you're ready.

12 A. Do you want me to read the attachment?

13 Q. You can look at it and see if you recognize  
14 it.

15 A. I do recognize it. If you were going to ask  
16 me specific questions, I wanted to familiarize  
17 myself.

18 Okay. I'm ready.

19 Q. The attachment is the announcement related  
20 to the creation of Real Estate Solutions as a  
21 formal group, correct?

22 A. Yes, it is.

23 Q. All right. And you wrote to Wanda on  
24 May 16th, "Wanda, we decided to limit the  
25 announcement today to only the groups

1 immediately impacted by the Real Estate  
2 Solutions integration.

3 "There are other departments that are  
4 subject to organizational changes, such as Asset  
5 Management, those will be announced shortly.  
6 Thanks."

7 Now, Asset Management was Wanda's  
8 group, correct?

9 A. Yes, that's what I would have thought.

10 Q. And Wanda writes, "Thanks for letting me  
11 know."

12 The reason they didn't make the  
13 announcement on May 16th was that there were  
14 still a lot of issues up in the air related to  
15 how the organizational changes would impact  
16 Asset Management, correct?

17 A. Well, the things were up in the air as to an  
18 understanding of what the department was doing.

19 Q. And in terms of what the department was  
20 doing, that would impact how Asset Management  
21 could fulfill its functions, correct?

22 A. Yes.

23 Q. Now, you want to go back. We're going to  
24 get into this May 23rd meeting.

25 A. Okay. (Witness complies.)

1 Q. You don't recall whether you responded to  
2 her e-mail about whether there were specific  
3 areas that she should be prepared to discuss,  
4 right?

5 A. Yeah, I don't recall. I'm not a prolific  
6 e-mailer, so I would have called or something.

7 Q. Do you recall whether you e-mailed or called  
8 or informed her in any way of what the subject  
9 matter was?

10 A. I don't know.

11 Q. Do you think it would have been useful to  
12 respond to her and let her know what the  
13 specific subject areas were going to be so that  
14 she could be prepared?

15 A. Sure, which is probably why I would have  
16 called her.

17 Q. Yet you don't have any recollection of doing  
18 that?

19 A. No.

20 Q. And right around this time, Ms. Speight lost  
21 yet another individual, correct? I think you  
22 mentioned Chuck Mathews.

23 A. Yes.

24 Q. If you look at P-22, it shows that  
25 Mr. Mathews submitted his resignation on May

1 19th, correct?

2 A. Just give me a second.

3 Q. That's actually at the bottom, if you look  
4 at the bottom of the first page. It's the  
5 e-mail from Mr. Mathews to Ms. Speight.

6 A. I'm sorry. There's just a lot of pages  
7 to 19 -- or to 22. I just want to make sure.

8 Q. Okay.

9 A. Okay. I'm sorry. The question?

10 Q. So Ms. Speight let you know that Mr. Mathews  
11 had submitted his resignation on May 19th,  
12 correct?

13 A. Well, based on reading this e-mail, he had  
14 called her to resign and then submitted it in  
15 writing on May 19th, so I don't know when he  
16 actually resigned.

17 Q. And she let you know, once she got the  
18 e-mail, that he was resigning?

19 A. Right. She forwarded me the e-mail.

20 Q. Okay. In addition, she asked you to put the  
21 question of who the heck was going to replace  
22 Mr. Mathews on to the agenda for May 23rd,  
23 correct?

24 A. I'm sorry?

25 Q. Do you recall that she asked to put on the

1 agenda for May 23rd the issue of who is going to  
2 handle the portfolio that Mr. Mathews had  
3 handled?

4 A. I believe so, yes.

5 Q. Now, also, prior to the meeting on  
6 May 23rd -- if you would look at P-23.

7 A. Okay.

8 Q. -- she attaches a copy of an ERMC  
9 presentation prepared for Credit. "You may want  
10 to keep this in mind as a replacement is  
11 identified."

12 And she is forwarding an e-mail from  
13 Mr. Mathews that had been sent to  
14 Mr. Hohenleitner and herself and Mr. Nienas,  
15 correct?

16 A. Yes.

17 Q. Was it your understanding that Mr. Mathews  
18 had been handling this Apollo relationship?

19 A. That's what I understood, yes.

20 Q. So she is sending an e-mail to you saying  
21 here's a copy of one of the things that he did  
22 for Credit, correct, this kind of report?

23 A. Yes.

24 Q. And she is letting you know that this is a  
25 skill that Mr. Mathews' replacement will need to

1 have, as you start thinking about who the  
2 appropriate person is to replace him?

3 A. That's the way I took it, yeah.

4 Q. And there's nothing wrong with copying  
5 Mr. Hohenleitner on that e-mail in terms of  
6 discussing staffing of a replacement for that  
7 portfolio, is there?

8 A. I don't think -- no, I don't know. I don't  
9 think there's anything wrong with it. I don't  
10 think it was necessary, but.

11 Q. All right. Look at P-24, and let me know  
12 when you're ready.

13 A. Okay.

14 Q. And Ms. Speight's forwarding Mr. Mathews'  
15 resignation e-mail had been sent, among others,  
16 to Mr. Nienas, who was one of Ms. Speight's two  
17 team leaders, correct?

18 A. Correct.

19 Q. And Mr. Nienas wrote, "Wanda, as you're  
20 aware, this comes as a big blow to our Asset  
21 Management area. Chuck has been responsible for  
22 the condo portfolio, the Apollo relationship,  
23 and several other complex transactions. His  
24 loss will be strongly felt, and departmental  
25 morale has already been impacted.



1 "In addition to Chuck's position, we  
2 have one additional position, full-time position  
3 that was not filled and which has been withdrawn  
4 from the HR system. I've attached Chuck's  
5 current portfolio listing. (Dan is working on  
6 the full portfolio breakdown.)"

7 Presumably, that's the other Don, Don  
8 Irwin, and then he signs it "Don." Correct?

9 A. Yes. It says "(Dan is working on the full  
10 portfolio breakdown.)"

11 Q. Oh, I'm sorry, "Dan." Do you know who Dan  
12 is?

13 A. No, I don't know who Dan is, but I -- just  
14 for clarity.

15 Q. You are absolutely correct.

16 And Wanda forwards that e-mail to you,  
17 right?

18 A. Yes.

19 Q. And she says, "Mark, can you please add to  
20 the agenda for our meeting tomorrow the topic of  
21 Chuck's portfolio? Given the complexity and  
22 high-profile visibility, especially with  
23 reporting to Credit on the condo exposure, I  
24 need your guidance on the ongoing coverage. As  
25 noted below, Chuck handles the Apollo

1 relationship, which requires frequent  
2 interaction, the Principal Finance Underwriting  
3 team, the Red Bank Mortgage Bankers, as well as  
4 senior Apollo reps.

5 "Chuck functions as the primary asset  
6 manager for the CV loans and both Meg and Steve  
7 are very demanding. It will be helpful with the  
8 transition if someone is identified soon to take  
9 over his portfolio. Please let me know who that  
10 person will be."

11 So Ms. Speight forwarded to you an  
12 e-mail telling you, according to Mr. Nienas,  
13 that Mr. Mathews' resignation comes as a big  
14 blow to the Asset Management area, right?

15 A. Yes.

16 Q. And you knew, because she forwarded Mr.  
17 Nienas' e-mail to you, that the departmental  
18 morale had already been impacted by his  
19 resignation, correct?

20 A. Well, reading the e-mail, it was Don's  
21 opinion that it been impacted, yes.

22 Q. And Ms. Speight made sure that you were  
23 aware of Mr. Nienas's opinion by forwarding the  
24 e-mail on to you?

25 A. I guess so, yes.

1 Q. And she asked you to put the question of the  
2 specific replacement for Chuck on the agenda the  
3 next day, right?

4 A. Yes, I did recall that before.

5 Q. You don't recall whether, in fact, you got  
6 to the question of Mr. Mathews' replacement in  
7 the meeting, do you?

8 A. I don't know if we did or not.

9 Q. All right. And from this memo it sounds  
10 like she has some familiarity with Mr. Mathews'  
11 portfolio and what he was doing with it, right?

12 A. Yes.

13 Q. And you didn't have any issue with her not  
14 understanding what Mr. Mathews' portfolio was  
15 like or what the importance of it was, did you?

16 A. I'm sorry, can you repeat that, or just read  
17 it back?

18 Q. It's okay. I'll leave it out.

19 Let's go to P-25.

20 A. (Witness complies.)

21 Q. Now, to your recollection, do you recall  
22 when the May 23rd meeting took place, what time  
23 of day?

24 A. No. I think it was early to mid-morning.  
25 That's a guess.

1 Q. Okay. Well, at 11:17 that morning,  
2 Ms. Speight is sending you an e-mail that says  
3 to Ms. Dooley, yourself, Mr. Irwin, Mr. Nienas,  
4 showing you a 2006 Q1 Financial Tracking  
5 document, correct?

6 A. Yes.

7 Q. And if you turn to P-26, a couple of minutes  
8 later she sends you another document and writes,  
9 "Mark/Mike" -- and it's actually an e-mail to  
10 you and Mr. Carp and Ms. Dooley and  
11 Mr. Finkenstaedt.

12 She says, "Mark/Mike, Attached are the  
13 procedures which were recently revised.

14 (Carolyn Mendicino and her staff were drafting  
15 these, based on PLG Asset Management input.)  
16 Revisions to other policies were put on hold in  
17 late March, given the pending changes."

18 Do you recall Ms. Speight forwarding  
19 this document to you on the morning of May 23rd?

20 A. Well, seeing it here, no, I don't remember.  
21 I remember seeing the documents.

22 Q. And if the meeting was first thing in the  
23 morning, then, the last two e-mails we saw were  
24 following up on the meeting. And if it was  
25 after this, she is sending this in preparation

1 of the meeting, correct?

2 A. I would agree.

3 Q. Let's go to P-27.

4 A. (Witness complies.)

5 Q. I will ask you to take the time to look at  
6 the document, because I think it's actually two  
7 separate documents. If you see the first couple  
8 of pages have functions listed without any  
9 columns to the left, and then after you get  
10 through to the end there's what's, in essence,  
11 the same document with some functions filled in.

12 Do you see the distinction between  
13 them?

14 A. I do.

15 Q. Now, this was the document that was created  
16 in preparation for the May 23rd meeting,  
17 correct?

18 A. Yeah. I believe it was -- I don't know if  
19 it was specifically for the 23rd, but this is  
20 what we were getting to. With all the meetings  
21 that we were having, ultimately this is what  
22 we're looking for.

23 Q. The meeting has been described, I believe,  
24 by you, in P-30. It says the "purpose of the  
25 meeting was to continue the discussion held the

1 prior week with Mike Carp, in which we  
2 identified tasks for the separate departments.  
3 This meeting was a, quote, "a further drill  
4 down," unquote, into the Asset Management  
5 program."

6 Do you agree with me that that was the  
7 purpose of the meeting?

8 A. Yes.

9 Q. All right. And then it says, "Clare took  
10 the time to prepare a spreadsheet to facilitate  
11 the discussion; the spreadsheet was an  
12 adaptation from the Asset Management Job  
13 Functions worksheet previously forwarded to me."  
14 Right?

15 A. Yes.

16 Q. And the Asset Management job functions  
17 worksheet was the function that Wanda had  
18 forwarded to you, that we just saw a few minutes  
19 ago, with all of the descriptions of the  
20 different Asset Management job functions?

21 A. I would think that the worksheet I'm  
22 referring to is probably the first part of  
23 Exhibit 27, and then the second part was Clare's  
24 adaptation to that document.

25 Q. Well, let's try and be clear on that.

1           If you look at P-27, I think the first  
2 couple of pages is actually Clare's adaptation  
3 that was created prior to the meeting, and then  
4 when it's filled in that's what got filled in as  
5 a result of the meeting. Does that make sense?

6 A. I don't know if that's -- I don't recall if  
7 that's what happened, or if this is just leading  
8 up to this meeting. I don't recall which one  
9 came first or last.

10 Q. If you look at the e-mail that Clare wrote,  
11 she writes -- there's an attachment --

12 A. Where?

13 Q. I'm sorry, on P-27.

14 A. Okay.

15 Q. It says, "Attachments: Job Functions  
16 5.22.06 x/s."

17           She says, "Attached is -- and it's  
18 dated May 24th -- it says, "Attached is the list  
19 we discussed yesterday. Please review and let  
20 me know if you have any changes/corrections.  
21 Thank you, Clare Dooley."

22 A. Okay.

23 Q. So does that help refresh your recollection  
24 of the second document that's behind this is the  
25 version that was filled in as a result of the

1 discussions that you had on May 23rd?

2 A. I guess it does. I don't recall.

3 Q. Now, the meeting was among four people,  
4 correct --

5 A. Yes.

6 Q. -- you, Clare Dooley, Ned Finkendaedt, and  
7 Wanda?

8 A. Correct.

9 Q. Do you recall how long that meeting lasted?

10 A. About an hour.

11 Q. Could it have been two?

12 A. I don't think it would have been two, but it  
13 could have been a little over an hour.

14 Q. And do you recall going through this  
15 spreadsheet, line by line, and trying to figure  
16 out what group should be assigned to which task?

17 A. Yes, I do.

18 Q. Now, that was a fairly tedious process,  
19 wasn't it?

20 A. Uh-huh. Yes. Yes, I'm sorry.

21 Q. Learn from your deposition.

22 And Ms. Speight was able to contribute  
23 at the level that you were able to fill in all  
24 the assignments, correct, at least on a  
25 temporary basis?



1 A. That's why I'm having trouble with  
2 remembering when this was actually created,  
3 because we had been having a series of meetings.  
4 All of those meetings were designed to identify  
5 task responsibilities. So I don't -- we went  
6 line by line, but many of them were, yeah,  
7 agree, I agree, I agree. So tedious, but  
8 efficient.

9 Q. If you look at D -- starting with D010932.

10 A. Okay.

11 Q. Starting on that version of the document,  
12 there's a column on the left labeled "Proposed  
13 Department." Right?

14 A. Yes.

15 Q. And those are all filled in, right?

16 If you go from there to the end of the  
17 document --

18 A. Okay.

19 Q. -- you would agree with me that there's  
20 nothing left on the table as a result of the  
21 meeting you had on May 23rd, in terms of  
22 proposed departments?

23 A. No, I don't know that I agree with you.

24 Q. All right. Well, do you see any blanks on  
25 the document in terms of where there's a

1 proposed department?

2 A. Well, I see inserted comments, and at least  
3 one question mark as I look through.

4 Q. But those are not on which department should  
5 be handling the job, right?

6 A. The one question mark is. That's the only  
7 one I see.

8 Q. Where's that's?

9 A. D010934.

10 Q. And the question mark you have is "CAG?"  
11 Correct?

12 A. No. It's the fifth item from the bottom,  
13 sixth item.

14 Q. Oh, I see. "AM-LB?" is what you're talking  
15 about?

16 A. That's correct.

17 Q. And "AM" was Asset Management?

18 A. Yes.

19 Q. And what was "LB"?

20 A. Loan Boarding.

21 Q. That was the only assignment that you were  
22 still talking about where it should go, correct?

23 A. Based on this worksheet, yes.

24 Q. And in order to make the assignments, you  
25 needed Ms. Speight's input, correct?

1 A. Yes.

2 Q. And in order to provide that input in a  
3 meaningful way to make the assignments, she had  
4 to have a working knowledge of what her  
5 department did, right?

6 A. Yes.

7 Q. And as far as you're concerned, she  
8 exhibited that working knowledge in that meeting  
9 for the most part?

10 A. No.

11 Q. She didn't exhibit a working knowledge of  
12 the department?

13 A. No, I don't believe she did.

14 Q. If she didn't exhibit a working knowledge of  
15 the department, how are you able to make all of  
16 these assignments?

17 A. Well, the people who were in the meeting  
18 with me, Ned Finkendaedt, Clare Dooley, myself,  
19 and Wanda, between all of us we had a very sound  
20 understanding of Servicing and Asset Management,  
21 so we were able to come to conclusions as a  
22 team.

23 Q. From March to May, end of March to May, in  
24 order to gain an understanding of what  
25 Ms. Speight's group did at a granular level, you

1 needed her input, right? You testified to that  
2 earlier today?

3 A. I don't know about the time limit.

4 Q. Well, not before she started, right? Before  
5 she started talking to you at the end of March,  
6 you hadn't had any discussions about what Asset  
7 Management did at a granular level, right?

8 A. Not with Wanda, no.

9 Q. With anybody else?

10 A. Not that I recall, no.

11 Q. And Mr. Finkendaedt hadn't been part of the  
12 Asset Management Group, of Wanda's group, right?

13 A. No, he was not part of that group.

14 Q. You wouldn't expect him to have an  
15 understanding at a granular level of what the  
16 Asset Management functions were?

17 A. I think he was very familiar with what asset  
18 managers do.

19 Q. The way that Wanda's group did them, or  
20 asset managers in other departments?

21 A. Asset Management, generally.

22 Q. Did you understand that the type of Asset  
23 Management that Wanda did in the Proprietary  
24 Lending Group differed in many significant  
25 respects from how Asset Management was done

1 different, otherwise?

2 A. I don't think the functions were different.

3 I think the client was different.

4 Q. And you had to have an understanding of that  
5 at the granular level, right?

6 A. An understanding of what? I'm sorry.

7 Q. Of the client interactions and the types of  
8 clients that they were.

9 A. Yes.

10 Q. Okay. And --

11 A. Understanding of the client -- sorry.

12 Q. And Ms. Speight would have been the one who  
13 would have provided that to you of the four  
14 participants in the meeting, right?

15 A. Yes.

16 Q. Let's go back to P-30.

17 A. (Witness complies.)

18 Q. On the second page of P-30, "The meeting was  
19 extremely disappointing. Wanda did not exhibit  
20 any working knowledge of her department."

21 Now, that's not true, is it?

22 MR. BANKS: Excuse me, Your Honor, he  
23 cut off in the middle of the sentence. May I  
24 ask that the entire sentence be read?

25 MR. SALMANSON: I'm going to get to the

1 second half, too, Your Honor.

2 THE COURT: We'll give him an  
3 opportunity to do that.

4 MR. BANKS: Thank you, Your Honor.

5 THE COURT: Sure.

6 BY MR. SALMANSON:

7 Q. Wanda did not exhibit any working knowledge  
8 for her department. That's not true, is it?

9 A. I believe at the time I wrote this, yes, it  
10 was true.

11 Q. You're saying you got through the six-page  
12 document, which was the purpose of the meeting,  
13 without Wanda being able to exhibit any working  
14 knowledge of her department?

15 A. That's what I'm saying, yes.

16 Q. Second half of the sentence says, "When  
17 asked about particular functions" -- again,  
18 citing" -- sorry. Now I understand Mr. Banks'  
19 concern. So I want to be fair.

20 "Wanda did not exhibit any working  
21 knowledge of her department when asked about  
22 particular functions, again, citing, you will  
23 have to ask them."

24 So actually the concern was that she  
25 didn't exhibit a working knowledge about a

1 particular function or set of functions, not  
2 overall, correct?

3 A. I thought that's what I answered.

4 Q. All right. And do you recall the specific  
5 function that you were talking about?

6 A. A particular function?

7 Q. Yes.

8 A. No. I think my comments were that they were  
9 generally speaking. She didn't understand them.

10 Q. All right. Well, that's what I'm trying to  
11 get clear. I think Mr. Banks legitimately  
12 thinks that I misread the e-mail because there's  
13 an ambiguity here as to whether you're saying  
14 she didn't have any working knowledge of her  
15 department as a whole, or she didn't have any  
16 working knowledge of her department when asked  
17 about her particular functions.

18 In other words, were there a couple of  
19 things that she was less certain of, or was it  
20 as a whole, I don't know what my department is?

21 MR. BANKS: Objection.

22 THE COURT: It is a compound question,  
23 counsel.

24 MR. SALMANSON: Okay.

25 THE COURT: Why don't you break it up,

1 counsel?

2 MR. SALMANSON: Fair enough.

3 BY MR. SALMANSON:

4 Q. Can you tell me, in writing the sentence,  
5 what your intent was trying to express?

6 A. Well, the meeting was designed to be a very  
7 granular meeting. So when discussing the  
8 various functions, my recollection is that she  
9 was not able to answer any questions related to  
10 those functions, so I would rely on others in  
11 the group.

12 Q. But that wasn't true through the entire  
13 meeting, right? That was just at specific times  
14 within the meeting?

15 A. Yeah. I'm not saying that she didn't  
16 understand one thing.

17 Q. That's all I'm trying to get to.

18 The purpose of creating P-30 was to  
19 make sure that you memorialized all of your  
20 concerns about Ms. Speight's performance up  
21 until that time, correct?

22 A. No.

23 Q. No?

24 A. No.

25 Q. If you would look at Page 156 of your



1 deposition, Line 17.

2 A. Okay.

3 Q. It says,

4 "Q. And was it in particular to make  
5 sure that you memorialized all of your concerns  
6 about Ms. Speight's performance?" And your  
7 answer was,

8 "A. Yes, among other things."

9 Does that help refresh your  
10 recollection, that the purpose of this memo was  
11 to document all of your concerns about her  
12 performance up until that time?

13 A. No. And, as I read my deposition, I would  
14 say that it was designed to memorialize my  
15 thoughts on that particular meeting, which I  
16 think I said earlier as well.

17 Q. Okay. So you're saying what you said a year  
18 ago in your deposition is incorrect?

19 A. No, I don't think I am.

20 Q. Well, I asked you in your deposition,

21 "Q. Wasn't it in particular to make  
22 sure that you memorialized all your concerns  
23 about Ms. Speight's performance?" And you said,

24 "A. Yes. Among other things."

25 All of your concerns.

1 A. Well, as I sit here today, and as I sat  
2 there in the deposition a year ago, the idea was  
3 to memorialize my concerns about the meeting on  
4 May 23rd.

5 Q. That's not what you said in your deposition  
6 a year ago, right?

7 A. Just give me a second to read the questions  
8 that are leading up to this.

9 Q. Sure.

10 A. Well, you know, all I can say is that when I  
11 look at this and the reason behind me writing  
12 that up was based on that particular meeting.

13 Q. Well, that was the trigger for why you wrote  
14 it up, right?

15 A. What? The meeting was the trigger?

16 Q. Yes.

17 A. Yes. The outcome of the meeting caused me  
18 to write this.

19 Q. But the purpose of the meeting was to  
20 document all of your concerns right up until  
21 that date, until the day you wrote that memo,  
22 right?

23 MR. BANKS: Objection, Your Honor.

24 This has been asked and answered.

25 THE COURT: We'll allow it one last

1 time.

2 THE WITNESS: I think you said the  
3 purpose of the meeting was to memorialize my  
4 thoughts; is that it? The purpose of -- well,  
5 again, I'll --

6 BY MR. SALMANSON:

7 Q. To memorialize all of your concerns about  
8 Ms. Speight's performance.

9 A. The reason why I sat down and wrote the memo  
10 was to memorialize my thoughts about the outcome  
11 of the May 23rd meeting.

12 Q. Now, at the time that you wrote the memo, it  
13 wasn't for the purpose of handing out any kind  
14 of discipline to Ms. Speight, was it?

15 A. The purpose behind it?

16 Q. Yes.

17 A. I think the purpose behind it was to  
18 memorialize my thoughts.

19 Q. And you were going to share those thoughts  
20 with Mr. Lipson in Human Resources?

21 A. I don't know what I would have done,  
22 ultimately. You know, as a rule, I tend to  
23 memorialize my thoughts when things happen that  
24 are material.

25 Q. In fact, you forwarded the memo to Human

1 Resources for their input, correct?

2 A. Eventually I did, yes.

3 Q. And when you did that, it was prior to what  
4 we call -- if I refer to the risk rating e-mail,  
5 you'll know what I'm talking about, the May 25th  
6 e-mail?

7 A. Yes.

8 Q. You forwarded it to Human Resources prior to  
9 getting the risk rating e-mail, correct?

10 A. I believe I did, yes.

11 Q. All right. You asked for some feedback from  
12 them, correct?

13 A. Of course.

14 Q. In fact, you forwarded it to Mr. Fogle?

15 A. I believe I did, yes.

16 Q. And Mr. Fogle gave you some feedback,  
17 correct?

18 A. Yes.

19 MR. BANKS: Can I ask what exhibit is  
20 being shown?

21 MR. SALMANSON: It's your D-20, our  
22 P-32. That was Salmanson.

23 THE WITNESS: Which one should I look  
24 at?

25 MR. SALMANSON: P-32 is fine.

1 MR. BANKS: Is it D-21, possibly?

2 MR. SALMANSON: Your D.

3 BY MR. SALMANSON:

4 Q. D-20 is actually P-30, so you can take a  
5 look at P-30, if you want.

6 A. P-30?

7 Q. Yes.

8 A. P-30 is my memo.

9 Q. And if you turn to the second page, somebody  
10 has stuck in a comment, correct?

11 A. Yes.

12 Q. It's comment JCF-1, right?

13 A. Yes.

14 Q. And do you know who JCF-1 is?

15 A. Well, I would assume it's John Fogle.

16 Q. John Fogle is in Human Resources, right?

17 A. He was at the time.

18 Q. In the paragraph, after "You will have to  
19 ask them," you wrote, "Today, May 24th, 2006, I  
20 received follow-up items from Wanda, as we  
21 discussed yesterday; at this time, I'm convinced  
22 Wanda is providing this information to portray a  
23 sense of cooperation, which simply does not  
24 exist."

25 And Mr. Fogle wrote a comment to you

1 and said, "Was the information thorough/not  
2 thorough; would just elaborate on why you  
3 received the conclusion -- why you reached the  
4 conclusion as objectively as possible."

5 Now, let's start with answering  
6 Mr. Fogle's question.

7 Was the information that Ms. Speight  
8 provided as a follow-up to the meeting thorough  
9 or not thorough?

10 MR. BANKS: Excuse me, Your Honor, I  
11 would object. I don't think that Fogle  
12 commented anything about as a follow-up to the  
13 meeting. I think that's a mischaracterization.

14 THE COURT: The witness can answer if  
15 that's his recollection. All right?

16 MR. BANKS: Okay.

17 BY MR. SALMANSON:

18 Q. Let's try and answer that question that  
19 Mr. Banks just posed.

20 Was it your understanding when  
21 Mr. Fogle wrote, "was this information thorough,  
22 or not thorough," the only time you used  
23 information in that paragraph in relation to  
24 Wanda following up, right?

25 "Today, May 24th, 2006, I received

1 follow-up items from Wanda, as we discussed  
2 yesterday; at the time, I'm convinced Wanda is  
3 providing this information."

4 Do you agree that "this information"  
5 refers to the follow-up items?

6 A. Yes.

7 Q. Okay. So, now, with that understanding, do  
8 you believe that the information that  
9 Ms. Speight provided to you as a result of the  
10 meeting was thorough or not thorough?

11 A. I have no idea.

12 Q. Do you recall that she provided a whole  
13 bunch of reports to you as a result of the  
14 meeting?

15 A. Yes. I remember receiving information.

16 Q. In fact, Ms. Dooley had set out a bunch of  
17 action items for Ms. Speight to follow-up on,  
18 correct?

19 A. Yes, I think so.

20 Q. And those were also reflected in the  
21 spreadsheet. There were little comments that  
22 said "Wanda to provide a report," correct?

23 A. That's my recollection.

24 Q. Okay. And were you able to elaborate on why  
25 you reached that conclusion as objectively as

1 possible?

2 A. I think I modified the memo at one point.

3 Q. If you look at P-33.

4 A. (Witness complies.)

5 Q. If you look on the second page, if you can  
6 find the same paragraph.

7 A. Yes.

8 Q. You wrote, "On May 24th, 2006, I received  
9 follow-up items from Wanda, as we had discussed  
10 during Tuesday's meeting; at this time, however,  
11 I am convinced Wanda is providing this  
12 information to portray a sense of cooperation,  
13 which, given her demeanor in the meeting, simply  
14 does not exist."

15 Correct?

16 A. Yes, I see that.

17 Q. And so what you had done was Mr. Fogle asked  
18 you for something, as objectively as possible,  
19 to put forth your views of why she appeared to  
20 just be going through the motions on the day  
21 after the meeting, and you referred back to the  
22 demeanor of the meeting itself, correct?

23 A. Yes.

24 Q. And that was your response to him asking you  
25 to set forth, as objectively as possible, why



1     you thought she was going through the motions?

2     A.   I don't know if it was done in response to  
3     John Fogle's comment, or if it was just further  
4     edits by me.

5     Q.   Okay.  Now, do you recall discussing with  
6     Human Resources the contents of this e-mail?

7     A.   Yes.

8     Q.   At that point, you all agreed whatever  
9     happened in the May 23rd meeting wasn't going to  
10    result in any sort of discipline to Wanda,  
11    correct?

12    A.   We agreed it would not result in discipline?

13    Q.   Right.

14    A.   I don't know if we had agreed on that at  
15    that point, or not.

16    Q.   At some point you agreed that you should  
17    have a sit-down with Wanda, right --

18    A.   Yes.

19    Q.   -- and talk about what happened in the  
20    May 23rd meeting, correct?

21    A.   Yes.

22    Q.   And didn't you all agree that that sit-down  
23    was not going to be disciplinary in nature?

24    A.   I don't think we agreed to anything at that  
25    point.  I think we agreed we had to sit down and

1 talk to her.

2 Q. Did you think that the meeting would result  
3 in her being given any sort of warning?

4 A. I don't know what I thought at the time. I  
5 was -- I needed to speak to her and understand  
6 what was going on.

7 Q. You wanted to know why she was unhappy?

8 A. I guess I wanted to know why she was acting  
9 the way that she was.

10 Q. Were her actions in that May 23rd meeting  
11 surprising to you?

12 A. Very.

13 Q. Was it inconsistent with whatever you knew  
14 about Wanda before she joined you?

15 A. You know, I didn't really know Wanda before  
16 she was transferred over to Services.

17 Q. Did you think to talk to Ms. Berger about  
18 whether Wanda had engaged in such behavior back  
19 when she was reporting to Ms. Berger?

20 A. I don't think so. I don't know.

21 Q. Did you think to look at her prior  
22 performance evaluation to see if this was  
23 something that had been a problem in the past?

24 A. I don't think so.

25 Q. In fact, prior to her termination, did you

1 ever look at her prior performance evaluations?

2 A. I don't think I did.

3 Q. Did you know what kind of ratings she had  
4 gotten?

5 A. No, I did not.

6 Q. Do you know if she acted inappropriately in  
7 this meeting, whether she had ever previously  
8 been disciplined for inappropriate activities  
9 along these lines in the past?

10 A. I'm not aware of it.

11 Q. Did you have discussions with Mr. Fogle  
12 about whether this was indicative of prior  
13 behavior?

14 A. I don't think so.

15 Q. Whatever happened in the May 23rd meeting  
16 wasn't enough to merit termination, correct?

17 A. I don't think -- at that point, I hadn't  
18 decided or the decision hadn't been made.

19 Q. And you weren't asking Human Resources to  
20 have Ms. Speight terminated as a result of what  
21 happened in the May 23rd meeting?

22 A. No.

23 Q. Let's actually talk about this. We have  
24 sort of been dancing around it.

25 What exactly happened in the May 23rd

1 meeting that set off the alarms? And I want to  
2 focus on what Ms. Speight said that got you  
3 upset. My understanding is that there were  
4 basically two sets of comments.

5 Let's deal with -- do you recall you  
6 had discussions with her about the morale of her  
7 group?

8 A. I do.

9 Q. And her response was, "You have to ask  
10 them."

11 A. That's correct.

12 Q. And did you think that was inappropriate?

13 A. Yes.

14 Q. Why?

15 A. Well, looking back, she had forwarded me the  
16 e-mail about Chuck Mathews. I was asking -- I  
17 was asking the manager of a department whether  
18 or not there were morale issues in that  
19 department.

20 And again, I'm still surprised, as I  
21 sit here today, at the comment that I would have  
22 to ask them.

23 Q. Well, she had suggested to you or put you on  
24 notice that there had been morale issues in the  
25 department related to the resignations, right,

1 as we saw in the earlier e-mail? She forwarded  
2 Mr. Nienas' e-mail.

3 A. I'm sorry. I would say she forwarded an  
4 e-mail to me. She and I -- at that point, I  
5 don't believe we had ever spoken about it.

6 And I was -- you know, as a manager, I  
7 was curious, concerned. It was a legitimate  
8 question on my behalf.

9 Q. And she had multiple discussions with you  
10 about morale in her department in the past,  
11 correct?

12 A. I don't know that we had.

13 Q. You don't recall that she specifically asked  
14 you to address her group in order to enhance  
15 morale?

16 A. I think the context of that discussion was  
17 they didn't know who I was, and it was  
18 appropriate that I would spend some time with  
19 them, so we had those meetings.

20 Q. And part of that was to make them feel  
21 comfortable with the transition?

22 A. Yes. I would make a distinction between  
23 comfort with transition to morale, though.

24 Q. Do you recall Ms. Speight specifically told  
25 you that Mr. Mathews' resignation came as a

1 surprise to her?

2 A. I don't know if I recall that or not. I'm  
3 sure it did.

4 Q. You're sure that it was a surprise to her?

5 A. I would think so, yes.

6 Q. If she thought that Mr. Mathews had been  
7 happy and then got this resignation, would it be  
8 fair to say that maybe she was concerned that  
9 she didn't know actually what the morale was of  
10 her department?

11 MR. BANKS: Objection, Your Honor. I  
12 think it calls for speculation as to Ms.  
13 Speight's state of mind.

14 THE COURT: Overruled. I think there's  
15 some ability to answer this.

16 Do you know?

17 THE WITNESS: Can I just have the  
18 question again?

19 BY MR. SALMANSON:

20 Q. Sure. I'm not sure I can give it to you.

21 (Whereupon, the court reporter read  
22 back the last question.)

23 THE WITNESS: I guess I have a couple  
24 thoughts about that.

25 People resign for a lot of different

1 reasons. It's not always because they are  
2 unhappy.

3 And then if it did come as a surprise  
4 to her, I would have expected that she would  
5 have reached out to her department to gain an  
6 understanding of whether or not there was an  
7 issue.

8 So for her to respond to me in the way  
9 that she did was surprising.

10 BY MR. SALMANSON:

11 Q. Well, if at that moment that you asked the  
12 question, how's the morale in your department,  
13 she felt like she didn't have a handle on it,  
14 wouldn't it have been appropriate for her to  
15 say, "I don't know. You're going to have to ask  
16 them"?

17 A. No, I don't think that would be appropriate.

18 Q. Because she should know?

19 A. Well, I would say as the manager of the  
20 department, she would either know or take  
21 responsibility to get an understanding of it,  
22 not just I don't know and I don't care.

23 Q. No, she didn't say "I don't care," did she?

24 A. No, but you're asking for my opinion.

25 Q. Right. No, but the question is, if she

1 didn't know, the response was, "I don't know.  
2 You'll have to ask." Right?

3 She didn't say, I don't care what the  
4 morale is, right?

5 A. That was her response, yes.

6 Q. "I don't know. You'll have to ask."  
7 Correct? And if she didn't know, that's a fair  
8 response, right?

9 A. No, I don't think it is.

10 Q. Do you know whether she knew what the morale  
11 was of her department?

12 A. No. That's why I asked if there were any  
13 morale issues.

14 Q. Do you think she was being insubordinate  
15 when she said "I don't know"?

16 A. When she said "I don't know," no, I would  
17 say probably not.

18 "You'll have to ask them," yes, I would  
19 say she should have.

20 Q. Why do you think that is insubordinate?

21 A. Again, the way I received that comment was  
22 that I don't know and I don't care. If you want  
23 to know, go and ask them yourself.

24 Q. So you inferred from what she was saying, I  
25 don't know, I don't care?



1 A. Yes. The language and the body language, if  
2 you will.

3 Q. I want to be very clear. She never said I  
4 don't know and I don't care to you?

5 A. That's correct. Not that I recall.

6 Q. Now, the other comment that she made was  
7 that at some point you asked for her opinion  
8 about a particular task, correct?

9 A. Yes.

10 Q. And her response was allegedly something  
11 along the lines, "My opinion doesn't count,"  
12 correct?

13 A. Yes.

14 Q. And what was your response when she said  
15 that?

16 A. I don't know if I had a direct response to  
17 that comment.

18 Q. Do you recall whether you followed up in any  
19 way to try to convince Ms. Speight that her  
20 opinion did, in fact, count?

21 A. Well, I just asked her her opinion, so I  
22 would think that that would indicate that I did.  
23 I wanted to know what that was.

24 There were -- so I don't know.

25 Q. You don't recall whether you tried to

1 encourage Ms. Speight after she made the comment  
2 to say, "Ms. Speight, you're opinion does count.  
3 Please let me know. What are you thinking?"

4 A. I don't recall that.

5 Q. Do you recall any time after May 23rd saying  
6 to her, "I want you to know I value your  
7 opinion, and I would appreciate it if you share  
8 it with me?"

9 A. Specifically that, no, I don't remember  
10 that.

11 Q. Was it part of your intent, when you set up  
12 the meeting to discuss the May 23rd meeting with  
13 Human Resources, to let Ms. Speight know that  
14 her opinion was going to be valued going  
15 forward?

16 A. Yeah, that I -- I'm reading the thing here,  
17 too, and I recall saying or at least thinking  
18 that we believe in her abilities, and that's why  
19 we had offered her the position to begin with.

20 Q. And as part of believing in her abilities,  
21 you were looking to her opinion and you hoped to  
22 value it, correct?

23 A. Yes.

24 Q. Now, one of the things that you discussed  
25 was the possibility of Ms. Speight, instead of

1 reporting to you, reporting to Mr. Finkendaedt,  
2 correct?

3 A. Yes, that's correct.

4 Q. You had those discussions with HR?

5 A. Yes, I believe I did.

6 Q. What was your thought process in terms of  
7 having her report to Mr. Finkendaedt instead of  
8 to you?

9 A. Ned was -- well, to say he had more time  
10 wouldn't be accurate. He was busy, too. We  
11 were all busy.

12 I think gaining the level of  
13 understanding that I had, I believe that Wanda  
14 and her group needed closer supervision than I  
15 was probably capable of doing, so I wanted her  
16 to have the availability to work with Ned.

17 Q. And eventually Mr. Fogle convinced you that  
18 that was not a good idea, correct?

19 A. Yes.

20 Q. And do you recall what his rationale was?

21 A. No, I don't.

22 MR. SALMANSON: Your Honor, we'll be  
23 moving into the risk rating e-mail. I don't  
24 know if you want to break or go into that topic.

25 THE COURT: We'll take our lunch break

1 now, and we'll pick up this afternoon.

2 Lady and gentlemen, we're going to  
3 adjourn for lunch now. We'll be in recess until  
4 1:30.

5 Please do not talk about the case among  
6 yourselves or with others.

7 Enjoy your lunch today.

8 You're excused.

9 (Luncheon recess was held at  
10 12:30 p.m.)

11 (The Court resumed the proceedings at  
12 1:30 p.m., at which time the jury entered the  
13 courtroom.)

14 THE COURT: Good afternoon, lady and  
15 gentlemen.

16 You may proceed, counsel.

17 BY MR. SALMANSON:

18 Q. I want to make sure that I clarify two  
19 things from your testimony this morning before  
20 we move on to the risk rating memo.

21 You testified that the concerns you  
22 were starting to have started to manifest  
23 themselves after that May 12th meeting or  
24 whatever the date of that meeting was, correct,  
25 from May 12th to May 23rd?

1 A. Yes, it was in that time frame.

2 Q. And during that time frame, you said that  
3 you had a number of meetings and interactions  
4 with Ms. Speight that manifested in which those  
5 concerns started to manifest themselves?

6 A. Yes, I believe so.

7 Q. Can you estimate for me how many meetings  
8 you think you had in that time period?

9 A. I don't know if I could.

10 Meetings or interactions?

11 Q. Let's say interactions.

12 A. Many.

13 Q. Several a day or daily?

14 A. No. It would probably be maybe one or two a  
15 day, that's all.

16 Q. And you generally didn't interact with her  
17 on the weekends, did you?

18 A. No.

19 Q. And do you recall between May 12th and  
20 May 23rd, whether you were interacting in person  
21 or on the phone?

22 A. I believe it would have been both.

23 Q. Do you have a sense of whether the in-person  
24 interactions or the telephonic interactions were  
25 giving you the increased concern, or both?

1 A. I would say both.

2 Q. Do you recall how many in-person  
3 interactions you had with her between May 12th  
4 and May 23rd?

5 A. No, I don't.

6 Q. Do you recall whether you even had any?

7 A. I can't recall any meetings. I know we had  
8 been speaking frequently at that point.

9 Q. Turn your attention to P-15.

10 A. (Witness complies.)

11 Q. Do you recall that May 12th was a Friday,  
12 correct?

13 A. Yes. I see that on the memo.

14 Q. So that was the date that you had the  
15 meeting with Ms. Speight.

16 You didn't talk to Ms. Speight, as far  
17 as you know, over the weekend? You didn't  
18 typically do that?

19 A. I don't think I would have.

20 Q. Do you recognize the document that's set  
21 forth in P-15?

22 A. Yes. This is a schedule that's prepared  
23 often.

24 Q. And, in particular, this schedule shows your  
25 schedule from May 15th to May 26th, correct?

1 A. Yes.

2 Q. So May 15th, Monday, the first working day  
3 that you had to interact with Ms. Speight, you  
4 were in the office that day, correct, according  
5 to this calendar?

6 A. According to the schedule, yes, I was  
7 scheduled to be in the office that day.

8 Q. And on May 16th there's a plus sign.

9 Do you know what that means?

10 A. Yes. That would indicate the previous cell  
11 or office. That I was in the office, yes.

12 Q. So you were in the office on Monday,  
13 Tuesday, and Wednesday, so you had three days to  
14 interact with Ms. Speight on those dates,  
15 correct?

16 A. Yes.

17 Q. But then until May 23rd, you didn't have the  
18 opportunity to interact with her again, did you?

19 A. No, I don't agree with that.

20 Q. Well, what does the calendar say for  
21 May 18th?

22 A. The schedule says that it's "PTO."

23 Q. That stands for paid time off?

24 A. Correct.

25 Q. You were, in fact, on paid time off on

1 Thursday, May 18th, correct?

2 A. I have no idea whether I was or wasn't.

3 Q. Do you have any reason to believe that you  
4 were not on paid time off on that day?

5 A. Very often I schedule time off, but I'm not  
6 able to take it, so I have no idea if I was in  
7 that day or not.

8 Q. The next day it also shows you being on paid  
9 time off, right?

10 A. Correct.

11 Q. So that would be Friday. In fact, it  
12 continued until Monday, May 22nd, on paid time  
13 off, right?

14 A. On the schedule, yes.

15 Q. You didn't return to the office until  
16 May 23rd, the day of the May 23rd meeting,  
17 according to the schedule, correct?

18 A. Yes.

19 Q. And do you agree with me that when you're on  
20 paid time off, you try to honor that time and  
21 not do business things?

22 A. No.

23 Q. Do you recall what your view was in terms  
24 of -- or what you had planned to do in May of  
25 2006 with your paid time off?



1 A. I have no recollection.

2 Q. Do you recall having any discussions with  
3 Ms. Speight about the fact that you were going  
4 to be out of the office for several days leading  
5 up to the May 23rd meeting?

6 A. I don't know.

7 Q. The only other question is, In the May 23rd  
8 meeting, it was you and Speight,  
9 Mr. Finkenstaedt, and Ms. Dooley.

10 I'll represent to you -- and it's in  
11 Mr. Finkenstaedt's deposition on Page 51.

12 A. Page 51?

13 Q. Yes. It's Mr. Finkenstaedt's deposition.  
14 I'll give the counsel the line.

15 MR. SALMANSON: It's actually starting  
16 on Page 50, leading into Page 51.

17 BY MR. SALMANSON:

18 Q. There was a discussion about his  
19 recollection of the interaction between you and  
20 Wanda at the meeting.

21 And he says, "After she made the  
22 comment" --

23 MR. BANKS: Objection. I don't think  
24 there's a basis to read another witness'  
25 testimony.

1 MR. SALMANSON: I'm trying to refresh  
2 his recollection, Your Honor.

3 THE COURT: How are you refreshing his  
4 recollection as to the testimony?

5 MR. SALMANSON: Mr. Finkenstaedt  
6 testified as to something that he recalled  
7 Mr. McCool saying in reaction to the meeting,  
8 and I just want to see if that refreshes his  
9 recollection.

10 THE COURT: I'm going to overrule your  
11 objection. It's premature. We haven't heard  
12 the question yet.

13 Proceed with your question.

14 And hold off answering it, until I have  
15 ruled on it.

16 THE WITNESS: Okay.

17 BY MR. SALMANSON:

18 Q. The leading was that Mr. Finkenstaedt  
19 described you requesting solicitor  
20 recommendation from Wanda -- I'm sorry, it's --  
21 we're now on Page 50 at the bottom, Line 21. I  
22 say,

23 "Q. And if you could describe what you  
24 recall.

25 "A. I recall that there was -- I

1 generally recall that there was a discussion  
2 about business practices and overlaps in  
3 functional responsibilities and I recall  
4 Mr. McCool soliciting recommendations.

5 "I recall Mr. -- I recall Mark  
6 requesting -- soliciting a recommendation from  
7 Wanda as to her opinion on a practice. I don't  
8 recall what practice it was, and I recall her  
9 response, something to the effect of, her  
10 opinion -- she felt her opinion didn't matter,  
11 and that management was going to do whatever  
12 they wanted anyway."

13 And then I asked,

14 "Q. Okay. And what happened next?"

15 And then, Your Honor, he says what  
16 Mr. McCool's response was, and that's what I  
17 would like to refresh his recollection on.

18 THE COURT: So you want to ask the  
19 question, Did you say this at this particular  
20 time?

21 MR. SALMANSON: Right. Or does this  
22 help refresh your recollection that you said  
23 this?

24 MR. BANKS: I'll withdraw the objection  
25 as to the next answer, Your Honor.

1 THE COURT: Very well.

2 BY MR. SALMANSON:

3 Q. So I say,

4 "Q. Okay. And what happened next?"

5 Actually, it was my colleague, Ms. Ire.

6 His response was,

7 "A. I recall that there was, you know,  
8 an effort on Mark's part, Mark McCool's part, to  
9 say that that wasn't the case."

10 As you sit here today, do you recall  
11 whether you tried to convince Ms. Speight in the  
12 meeting that that wasn't the case, and that you  
13 did, in fact, want her opinion?

14 And if you don't recall --

15 A. I think that I said earlier that I did want  
16 her opinion, which is why I asked the question  
17 to begin with. But I don't remember pressing  
18 her on it.

19 Q. So you don't recall one way or the other  
20 whether you responded to her comment or not?

21 A. No, I don't.

22 Q. I want to turn your attention to P-3.

23 A. (Witness complies.)

24 Q. Now, P-3 is something captioned "Defendant  
25 Capmark Finance, Inc.'s Supplemental Answers and

1     Objections to Plaintiff's First Set of  
2     Interrogatories."

3             MR. SALMANSON: Your Honor, I don't  
4     know whether it's appropriate to tell the jury  
5     what Interrogatories are or --

6             THE COURT: Is that your request?

7             MR. SALMANSON: Yes, please.

8             THE COURT: Very well. Lady and  
9     gentlemen, the particular document is an  
10    Interrogatory.

11            An Interrogatory is a form or a  
12    question that is presented to the opposing side  
13    for their response or statement in relation to  
14    the question that's contained in that  
15    Interrogatory. These are affirmed or sworn to  
16    as their position or their response to the  
17    question that is posed in the Interrogatories.

18            The plaintiff sends theirs to the  
19    defendant, and the defendant then in return  
20    sends theirs to the plaintiff for responses to  
21    particular questions and aspects of the  
22    discovery process in the case as it's beginning,  
23    at the very outset of the case, so that they  
24    know where to pursue their discovery in the  
25    case.

1 Anything additional?

2 MR. SALMANSON: Your Honor, thank you  
3 very much.

4 THE COURT: You're welcome.

5 BY MR. SALMANSON:

6 Q. If you could turn to Page 2 of the  
7 Interrogatories.

8 A. (Witness complies.)

9 Q. The first question that we asked of Capmark  
10 was to, "Please describe in detail each and  
11 every legitimate non-discriminatory reason that  
12 you contend motivated the termination of  
13 Ms. Speight."

14 The objections and answer, although  
15 there isn't really any objection, is,  
16 "Ms. Speight's employment was terminated because  
17 of her unprofessional, uncooperative, and  
18 disrespectful conduct."

19 Do you agree with that statement?

20 A. Yes, I do.

21 Q. And when I asked you in your deposition  
22 about all of the ways in which she was  
23 unprofessional, uncooperative, and  
24 disrespectful, you only pointed to her conduct  
25 in the May 23rd meeting and the May 26th risk

1 rating e-mail, correct?

2 A. I believe so, yes.

3 Q. So as far as you know, those are the only  
4 two ways in which she was unprofessional,  
5 uncooperative and disrespectful, which were the  
6 only factors that led to her termination?

7 A. Yes.

8 Q. So you would agree with me that whatever  
9 concerns you allegedly had between May 12th and  
10 May 23rd had nothing to do with the reasons for  
11 her termination, as far as you knew?

12 A. I think the manner in which she was  
13 exhibiting her disinterest was all leading up to  
14 her demeanor in the May 23rd meeting, so you  
15 think it's all part of it.

16 So I don't know that I agree with your  
17 statement.

18 Q. Well, I asked you, let's go to your  
19 deposition. Look at Pages 42 to 44 of your  
20 deposition. You can read it as a whole.

21 I asked you to tell me all the ways in  
22 which you thought that Ms. Speight was  
23 unprofessional, uncooperative and disrespectful.

24 A. Okay.

25 Q. Why don't you take the time to read that.

1 A. (Witness complies.)

2 MR. BANKS: Is it those three pages in  
3 their entirety?

4 MR. SALMANSON: I think to be fair  
5 and to give them a full context, he should read  
6 all three pages.

7 MR. BANKS: Very well.

8 THE WITNESS: I'm sorry. Out loud or  
9 to myself?

10 MR. SALMANSON: No, to yourself. Tell  
11 me when you're ready.

12 (Pause.)

13 THE WITNESS: Okay.

14 BY MR. SALMANSON:

15 Q. Would you agree with me that in that  
16 testimony overall you could only point to things  
17 that happened in the May 23rd meeting and the  
18 May 26th risk rating as being unprofessional,  
19 uncooperative, or disrespectful?

20 A. Yes, I would agree with that.

21 Q. Now, let's turn to the May 25th risk rating.

22 A. (Witness complies.)

23 Q. Actually, before I do that, I want to read  
24 you Capmark's counsel's, Mr. Banks's parts of  
25 his opening statement because he said some



1 things in there which I think you can comment  
2 on.

3 He says, "Although she had already  
4 commented in e-mails about" --

5 MR. BANKS: Can I get a page number,  
6 please?

7 MR. SALMANSON: Sure, Page 8.

8 MR. BANKS: Thank you.

9 MR. SALMANSON: Line 18.

10 BY MR. SALMANSON:

11 Q. Mr. Banks said, "Well, although she had  
12 already commented in e-mails about knowing that  
13 people in her group were not unhappy, not to  
14 McCool" --

15 MR. BANKS: Excuse me, Mr. Salmanson?

16 MR. SALMANSON: Yes?

17 MR. BANKS: Page 8 on my copy is Judge  
18 Joyner's preliminary comments.

19 MR. SALMANSON: This is just your  
20 opening.

21 MR. BANKS: Oh, so you don't know where  
22 it comes in at.

23 MR. SALMANSON: Do you just want to  
24 read along?

25 MR. BANKS: Just bear with me for a

1 minute. If I could look for a moment.

2 THE COURT: Sure.

3 MR. BANKS: Just show me where you're  
4 going to read from.

5 BY MR. SALMANSON:

6 Q. Mr. Banks told the jury, "Although she had  
7 already commented in e-mails about knowing that  
8 the people in her group are not unhappy" -- I'm  
9 sorry -- "that the people in her group were" --  
10 he said "not unhappy," but I think he meant to  
11 say "were unhappy" -- "not to Mr. McCool, but  
12 to others, she just said to Mr. McCool, I don't  
13 know."

14 Now, that's not completely accurate,  
15 right, because she did forward the e-mail to you  
16 from Mr. Nienas suggesting that the group's  
17 morale was low as a result of Mr. Mathews'  
18 resignation, correct?

19 A. The e-mail that -- part of that e-mail  
20 string? The comment that -- you know, I think  
21 that was part of the e-mail. I don't know why  
22 she forwarded the e-mail, other than to deliver  
23 the e-mail to me, but, yeah.

24 Q. So she had informed you, at least once by  
25 e-mail, that her group was unhappy?

1 A. I don't know if I would say it that way.

2 Q. Okay. The other thing is that this morning  
3 you were talking about the purpose of getting HR  
4 involved.

5 And he said, "After the May 23rd  
6 meeting, so, as Mr. McCool will tell you and all  
7 the evidence will show, there was no plan to  
8 terminate her, there was no plan to discipline  
9 her. He did the right thing. He went to the  
10 Human Resources organization and he said, come  
11 help me. Help me. Come talk to Ms. Speight so  
12 that she can be a valuable member of our team,  
13 so that she can lead her group in bringing these  
14 departments together and earn what we are paying  
15 her."

16 This morning I asked you whether you  
17 thought the intent of going to HR was not for  
18 discipline, and you said that you hadn't made  
19 that determination yet, right?

20 A. Yes, I believe that's what I said.

21 Q. So do you disagree with the characterization  
22 in any way of what Mr. Banks said?

23 A. Not at all, no. It's more eloquent than I  
24 would be, but, you know.

25 Q. Okay.

1 Now, prior to May 25th, had you had  
2 discussions about the Canadian loan portfolio  
3 with Ms. Speight?

4 A. I don't remember if I had discussions with  
5 her or not about that portfolio.

6 Again, we were talking all the time  
7 about a lot of different things.

8 Q. Do you recall whether prior to May 25th you  
9 had been made aware that Mr. Lauerman had  
10 offered a helping hand specifically with the  
11 Canadian loan portfolio?

12 A. Yes. I recall e-mails about that.

13 Q. So was it your understanding that, at least  
14 at some point, Ms. Speight had arranged with  
15 Mr. Lauerman to have his people asset-manage the  
16 Canadian loan portfolio?

17 A. Okay. Whether Mr. Lauerman had arranged for  
18 his employees to asset-manage?

19 Q. No, whether Ms. Speight had arranged with  
20 Mr. Lauerman to have Mr. Lauerman's people  
21 asset-manage part or all of the Canadian loan  
22 portfolio?

23 A. I recall there being discussion, but the  
24 asset management of that portfolio would have  
25 been in Wanda's group's responsibilities.

1 Q. And you agreed with me that asset management  
2 and risk ratings go hand in hand?

3 A. Risk ratings are part of the asset  
4 management process.

5 Q. And so are you saying that you didn't know  
6 that Mr. Lauerman and Ms. Speight were working  
7 together to have some of the Asset Management  
8 responsibilities handled by Mr. Lauerman, as  
9 opposed to Ms. Speight's group?

10 A. No.

11 Q. No, you weren't aware?

12 A. No, I'm not saying that.

13 Q. Oh, okay.

14 A. I thought I just said that I was aware that  
15 there were conversations going on.

16 Q. And aside from those conversations, did you  
17 know whether any assignments had been made?

18 A. I don't know.

19 Q. Do you recall whether you knew that some of  
20 the SPG loan orphan portfolio had been assigned  
21 to Mr. Lauerman's group?

22 A. I know that was part of the discussion, but  
23 I don't know at what stage they were at, at that  
24 time.

25 Q. During those discussions, you never said to

1 Ms. Speight, Wait a minute, you can't give this  
2 over to Mr. Lauerman. Right?

3 A. I don't know at what time I became aware of  
4 discussions.

5 Q. Regardless of when you became aware of it,  
6 prior to May 25th, you never said to anybody,  
7 No, I want Ms. Speight to be handling all of  
8 those?

9 A. Well, I believe that's what we were talking  
10 about in the meetings that we were having. I  
11 don't know what other conversations were  
12 occurring, but, during the meetings that I was  
13 in, that was part of the topic.

14 Q. And part of the topic was that Ms. Speight  
15 was shorthanded with her asset managers, right?

16 A. That would have been part of the  
17 conversation.

18 Q. And do you recall whether you were CC'd on  
19 any e-mails having Mr. Lauerman's group doing  
20 the Asset Management functions for some of her  
21 portfolio?

22 A. I believe I was CC'd on some e-mails, yes.

23 Q. Those e-mails went back as far as April,  
24 right?

25 A. E-mails, with respect to --

1 Q. Assignment of some Asset Management  
2 functions to Mr. Lauerman.

3 A. Yep, yes.

4 Q. And from whenever in April, those first  
5 e-mails you were kept in the loop on that, until  
6 at least May 23rd, you never said, I don't want  
7 Mr. Lauerman's group doing that. I want you to  
8 do that?

9 A. I don't know if I really follow your  
10 question.

11 Q. Well, you were being kept in the loop that  
12 there were discussions going back and forth  
13 about assigning some of the stuff to  
14 Mr. Lauerman, right, or at least to his people?

15 A. I was certainly copied on some e-mails. I  
16 don't know if I was copied on all e-mails or  
17 not.

18 Q. So you knew some of these assignments were  
19 potentially going to Mr. Lauerman's group and  
20 until May 23rd, at least, you didn't say, bad  
21 idea, don't do it, these are yours, right?

22 A. I don't know if I agree with that. I mean,  
23 they are not in e-mails, but we were certainly  
24 talking about all of the assignments in the  
25 meetings that we were having.

1 Q. Can you point me to any e-mail in which  
2 Ms. Speight was saying to you, Mr. Lauerman is  
3 lending out a helping hand, and I don't think  
4 that we should do that?

5 A. I don't know that I can.

6 Q. As you sit here today, can you recall any  
7 conversation where you told Ms. Speight, Mr.  
8 Lauerman shouldn't be doing this?

9 A. I don't know how I can put it differently  
10 for you. I know we were talking about this  
11 topic during our meetings. I don't know whether  
12 I ever told Wanda, Ms. Speight, that I don't  
13 want Tony Lauerman working on this. I don't  
14 know.

15 Q. You can't recall telling Mr. Lauerman, I  
16 don't want you working on this, right?

17 THE WITNESS: Can you read that back to  
18 me, please?

19 BY MR. SALMANSON:

20 Q. Actually, let me step back.

21 Mr. Lauerman didn't report to you,  
22 right?

23 A. No, he did not.

24 Q. He reported to Mr. Carp, correct?

25 A. I believe so, at the time, yes.



1 Q. So you didn't tell Mr. Lauerman, I don't  
2 want you working on part of Wanda's portfolio,  
3 right?

4 A. No, I wouldn't have.

5 Q. You would have talked to Mr. Carp, right, if  
6 you were going to talk to anybody?

7 A. I would assume.

8 Q. And do you recall, as you sit here today,  
9 having any discussions with Mr. Carp about  
10 Ms. Speight inappropriately assigning those  
11 portfolios to Mr. Lauerman's group?

12 A. No.

13 Q. So the first time that Ms. Speight would  
14 have learned that you didn't want Mr. Lauerman's  
15 group doing the risk ratings was on May 25th,  
16 when you put it in the e-mail, right?

17 A. No, I do not agree with that.

18 Q. Because you think you told her on May 23rd?

19 A. The assignment of responsibilities was being  
20 discussed for several weeks.

21 Q. Right. And no final decisions had been  
22 made, right?

23 A. No, no final decisions had been made.

24 Q. So you couldn't have possibly told her that  
25 the decision would have been made not to let the

1 risk ratings for the SPG portfolio or the  
2 Canadian portfolio go to Mr. Lauerman's group,  
3 if you hadn't made any decisions yet, right?

4 A. You know, I don't think that's an accurate  
5 reflection of what we were discussing in the  
6 meetings.

7 Q. I don't understand, quite frankly,  
8 Mr. McCool. You never told her before you sent  
9 the e-mail on May 25th? It's a real simple  
10 question, I don't think it's appropriate for  
11 you, Ms. Speight, to assign the risk ratings and  
12 the Asset Management to Mr. Lauerman's group.

13 A. If you would phrase that question that I  
14 never put it in an e-mail, I would agree with  
15 you. I don't agree with it.

16 Q. You don't specifically recall telling her  
17 either, right?

18 A. As I sit here today, I don't specifically  
19 recall having that conversation. But part of  
20 the discussions that we were having was who was  
21 going to do what work. The Asset Management  
22 group's responsible for risk ratings. They  
23 always have been. There's no intention to  
24 change that.

25 Q. You made that clear in the May 23rd meeting,

1 right?

2 A. I believe that was made clear all along.

3 Q. Including the May 23rd meeting?

4 A. It would have been part of the meeting as  
5 well.

6 Q. So you would have made it clear on May 23rd;  
7 that all the Asset Management responsibilities  
8 belonged to Ms. Speight's group, and none of it  
9 should go to Real Estate Solutions, right?

10 A. I don't think I agree with that distinction.  
11 Part of the meetings that we were having was  
12 identifying the specific functions that would go  
13 to Real Estate Solutions or stay with Asset  
14 Management. Financial statements would be done  
15 by our Financial Statements Group.

16 So all of that was being discussed, and  
17 we continued to discuss it at a granular level  
18 on May 23rd.

19 Q. I want to focus specifically on risk  
20 ratings, not anything else.

21 A. Okay.

22 Q. May 23rd meeting, you believed that you said  
23 in the May 23rd meeting that risk ratings would  
24 only be done by Ms. Speight's group.

25 A. I don't think I testified that I said that.

1 Q. I'm asking you now.

2 A. I don't remember what I said in that meeting  
3 exactly. I don't. Sorry.

4 Q. Is it possible that, as of the May 23rd  
5 meeting, you were still okay with the idea that  
6 risk ratings could be done either by Real Estate  
7 Solutions or by Asset Management?

8 A. No, I wouldn't.

9 Q. So if somebody walked away from that meeting  
10 with that impression, there was clearly a  
11 communications breakdown?

12 A. I don't know what it would have been.

13 Q. Oh. A misunderstanding between you and the  
14 recipient?

15 A. A misunderstanding, or, you know, a refusal  
16 to accept. I don't know what it is.

17 Q. Could it have been a refusal to accept if  
18 they thought that Asset Management could be done  
19 by Real Estate Solutions or by Wanda's group?

20 A. Well, you're speaking about the risk ratings  
21 only, right?

22 Q. Yes, risk ratings only.

23 A. So the risk ratings are performed by Asset  
24 Management. That's a very clear standard.

25 Q. So anybody who thought otherwise was either

1 not listening or being insubordinate?

2 A. In the May 23rd meeting or after?

3 Q. After. If they walked away from that  
4 May 23rd meeting with the thought that the risk  
5 ratings could be done either by Wanda's group or  
6 Real Estate Solutions, they either weren't  
7 paying attention in the May 23rd meeting or they  
8 were being insubordinate.

9 Is that what you're saying?

10 A. No. I would not say that failure to  
11 understand something was insubordinate.

12 Q. Okay. So if Ms. Speight walked out of that  
13 meeting without understanding that, what the  
14 direction of your sentiment was, was that she  
15 wasn't being insubordinate?

16 A. No. I would say that she would not be  
17 insubordinate.

18 Q. If you could take a look at D-23.

19 A. D-23?

20 Q. Yes.

21 A. Okay.

22 Q. Now, this is an e-mail from Mr. Lauerman to  
23 Justin Snarponis, Edward Schmon, John Kipping,  
24 and CCs to Stacy Ciarlanti, Michael Carp, and  
25 Wanda Speight, and the subject is "Canadian

1       Loans."

2                   I don't want to be standing there  
3       reading it all. Can you just read it out loud  
4       to the jury, please?

5       A. The e-mail itself?

6       Q. Yes.

7       A. "My understanding is that all these loans  
8       which have been funded are on McCracken, and  
9       have been assigned a CRM in Canada. Since they  
10      are performing loans, effective today we will  
11      not be managing these loans. The assigned CRM  
12      will handle the day-to-day management of these  
13      loans, including all borrower interaction. If  
14      special requests arise, extensions, assumptions,  
15      major leases, et cetera, for which our expertise  
16      is required, we can review and respond as  
17      needed. Thanks. Justin and Ed, please forward  
18      this to the CRMs listed on McCracken for these  
19      loans. Thanks."

20      Q. Now, Mr. Lauerman is saying that "effective  
21      today, we're no longer going to be managing  
22      these loans," correct?

23      A. That's what the e-mail says.

24      Q. And would you agree with me that that  
25      suggests that prior to today Mr. Lauerman's

1 group had been managing those loans?

2 A. I guess that's implied.

3 Q. And, again, just to be clear, the management  
4 of the loans would include the risk ratings of  
5 the loans, correct?

6 A. No, I don't think so.

7 Q. I thought you testified this morning that  
8 Asset Management and risk rating went hand in  
9 hand?

10 A. I think you're taking that out of context.  
11 I think managing the loans is the Real Estate  
12 Solutions' -- is -- the loans would be in danger  
13 of defaulting so they required more  
14 hand-holding, but the Asset Management group  
15 would still have interaction with those  
16 particular loans.

17 Q. Okay. That's the way you interpreted the  
18 e-mail?

19 A. Yes.

20 Q. Do you know whether, in fact, Wanda's group  
21 had been asset-managing the loans in any way  
22 since Mr. Suri's departure?

23 A. No, I don't.

24 Q. Do you know whether Mr. Lauerman had  
25 actually trained or agreed to have some of his

1 people trained to do the risk ratings on those  
2 loans when he was assigned to asset-manage the  
3 loans?

4 A. No, I don't.

5 Q. Before we go to the next page, do you know  
6 why this reassignment or how this reassignment  
7 occurred?

8 A. What do you mean by "reassignment"?

9 Q. Well, it appears that effective today, those  
10 people are no longer asset-managing the loans,  
11 right? Do you know why, as of May 22nd, the  
12 loans -- why the loans were being reassigned?

13 A. Well, the e-mails of their understanding is  
14 that the loans are being reassigned, so I don't  
15 know what went into Mr. Lauerma's thoughts.

16 Q. I guess you anticipated my next question.

17 Do you know who made the decision to  
18 have the loans reassigned? It wasn't your  
19 decision, right, as far as you recall?

20 A. I don't remember. This is a smaller  
21 portfolio that was part of a larger transition.

22 Q. So you don't recall what was the triggering  
23 event that led to this first e-mail?

24 A. No, I don't.

25 Q. You don't recall prior to this e-mail going



1 out and saying to Ms. Speight, we decided that  
2 you're going to get the asset management of the  
3 loans back, do you?

4 A. No.

5 Q. If we can read up the e-mail chain. There's  
6 an e-mail from Mr. Nienas.

7 Do you know who he is?

8 A. I do.

9 Q. And he was one of Ms. Speight's team  
10 leaders, correct?

11 A. Correct.

12 Q. Can you read the substance of the e-mail to  
13 the jury?

14 A. "Maureen, it appears from the following  
15 e-mail correspondence that Asset Management  
16 responsibilities for the Canadian portfolio have  
17 been reassigned to the CRM in Canada. With risk  
18 ratings for the second quarter quickly  
19 approaching, the Canadian team will need to be  
20 trained on the methodology for using the risk  
21 rating model and determining the inputs. I have  
22 copied the CRMs in Canada who handle the PLG  
23 Canada assets. Thanks, Don."

24 Q. Now, are there parts of that e-mail that you  
25 don't agree with?

1 A. I would say, yes.

2 Q. And am I right that the part that you don't  
3 agree with is that Mr. Nienas seems to be making  
4 an assumption that the risk ratings are going  
5 hand in hand with the Asset Management  
6 responsibilities, correct?

7 A. Well, I would say that I disagree that the  
8 Asset Management responsibilities were  
9 reassigned to the CRM. I would disagree with  
10 that right from the beginning.

11 Q. And do you know whether Ms. Speight shared  
12 that disagreement?

13 A. With whom?

14 Q. Well, shared that view, that the risk rating  
15 should be assigned to CRMs in Canada?

16 A. I don't know.

17 Q. Just before we go on, I just want to go  
18 back, if you can take a look at P-11, and tell  
19 me when you have had a chance to review it.

20 A. Okay.

21 Q. Now, as I understood what you testified to a  
22 couple minutes ago, you thought that all along  
23 that the risk ratings, no matter who is  
24 asset-managing these various loans, the risk  
25 ratings always belonged with Wanda's group,

1 correct?

2 A. With the Asset Management Group.

3 Q. Now, P-11 relates to risk ratings, right?

4 It includes talking about the risk ratings for  
5 the orphan loan portfolio, correct?

6 A. Correct.

7 Q. And it's your view that those risk ratings,  
8 even if they were being asset-managed by Real  
9 Estate Solutions, should have been done by  
10 Wanda's group, the Asset Management Group,  
11 correct?

12 A. The process is managed by Asset Management.  
13 Other parties may contribute to the process, but  
14 the process is the responsibility of Asset  
15 Management.

16 Q. Would you agree with me that other people  
17 outside of Wanda's group could actually perform  
18 the risk ratings for the loans?

19 A. Could they actually perform them?

20 Q. Yes.

21 A. Yes.

22 Q. And that would have been okay, right? I  
23 mean, ultimately they would have to give the  
24 risk ratings to Wanda, so that she could defend  
25 them, right?

1 A. Yes.

2 Q. But there was nothing wrong with having the  
3 actual risk rating function performed by  
4 Mr. Lauerman's Servicing people, right?

5 A. The Asset Management Group was responsible  
6 for the risk ratings; therefore, they would be  
7 responsible for understanding that at an  
8 incredibly granular level. And if they weren't  
9 doing the work themselves, which is one of their  
10 charters, I don't know that they would be able  
11 to defend that in the credit rating.

12 Q. So my question was, Was it wrong for someone  
13 outside of Ms. Speight's department to be  
14 performing the actual risk ratings themselves?

15 A. No, I don't think it would have been wrong.

16 Q. In fact, Ms. Speight told you that she was  
17 getting people trained outside her department to  
18 do the risk ratings on the orphan loans, right?

19 A. Well, she says here that the Credit  
20 Department was going to provide training.

21 Q. In fact, what she said is, she writes to you  
22 and to Mr. Carp and to Julie Gschwind, and Julie  
23 had written, "Wanda, I understand Mark McCool's  
24 group will be handling all the orphan loans, and  
25 that Special Servicing will be transferring them

1 in the next week to ten days. In the meantime,  
2 I understand Nathan Perry is continuing to  
3 handle these loans. In light of this, is it  
4 appropriate for us to be trained?" And the  
5 subject matter of the e-mail is "Risk Rating  
6 Training," right?

7 A. Correct.

8 Q. And she writes and CCs you on May 9th,  
9 "Thanks for the feedback, Julie. Mark, Mike,  
10 the Credit Department will be providing training  
11 for the risk rating process." Right?

12 You understood that Julie was talking  
13 about getting people trained for risk ratings,  
14 correct?

15 A. Yes, I do.

16 Q. "The next cycle will Begin in late May. If  
17 Julie and Jackie are not the appropriate  
18 individuals to perform the risk ratings of the  
19 orphan SPG loans, please identify the  
20 appropriate personnel."

21 Jackie and Julie weren't any of Wanda's  
22 asset managers, right?

23 A. I don't believe so.

24 Q. They were Tony Lauerman's, right?

25 A. I think so. I'm not sure who they reported

1 to, but I believe so.

2 Q. But she's telling you, I'm getting the risk  
3 ratings done by someone outside of her  
4 department, right, on May 9th?

5 A. Well, I think the e-mail says that there are  
6 people outside of the department that were going  
7 to receive training.

8 Q. Right. And the training was so that they  
9 could perform the risk ratings on the orphan  
10 loan portfolio, right?

11 A. Well, it just says they are going to get  
12 training. If they are not the right people to  
13 do it on the orphan portfolio, then identify the  
14 people.

15 Q. Right. You understood from this e-mail that  
16 Jackie and Julie were going to be trained to do  
17 risk ratings so they could do the risk ratings  
18 on the SPG loan portfolio, didn't you?

19 A. I don't know what I understood from this.

20 Q. Well, as you read it today, do you have that  
21 understanding? She's not saying anything else.  
22 She's not talking about risk rating training so  
23 they could go out and do risk ratings, you know,  
24 just for whatever portfolio they want to pick up  
25 someday; is that right?

1 A. No, that's fair.

2 Q. Right. And these SPG orphan loans were  
3 orphan loans that her group had assigned?

4 A. I'm sorry, "had assigned"?

5 Q. Had been originally assigned to Wanda's  
6 group, correct?

7 A. Yes. They had been assigned to Wanda's  
8 group.

9 Q. And you never told her when she wrote this  
10 e-mail on May 9th, Wanda, I don't want people  
11 outside your group doing risk ratings. That's  
12 your responsibility and your responsibility  
13 alone.

14 A. No, I don't know if we ever had that  
15 conversation.

16 Q. Okay. Moving up the chain.

17 The bottom of Bates stamp 10956,  
18 there's an e-mail from Carolyn Grandstaff to  
19 Dana Jo Martino. The importance is high, and  
20 she says, "Can we please discuss? Risk ratings  
21 are not a function of Client Relations.  
22 Thanks."

23 You agree with that statement, right?

24 A. I do.

25 Q. It's a really bad idea to just have CRNs in

1 Canada doing the risk ratings, right?

2 A. No, I don't agree with that.

3 Q. Well, you agree with the statement that risk  
4 ratings aren't a product of Client Relations,  
5 right?

6 A. I do agree with that.

7 Q. And in those days -- and maybe this is where  
8 we may disagree, in those days CRNs were in  
9 Client Relations only, right?

10 A. Yes. They were Client Relations managers,  
11 yes.

12 Q. The terminology has now been broadened to  
13 cover other individuals, right?

14 A. I believe they have, yes.

15 Q. So at the time you agreed with this  
16 statement that the CRNs in Canada shouldn't be  
17 doing the risk rating, or if the people in  
18 Client Relations were CRNs, they shouldn't be  
19 doing the risk ratings, right?

20 A. Yes. It's not one of their functions.

21 Q. And do you know whether Ms. Speight shared  
22 that view with you?

23 A. I don't know.

24 Q. Okay. Moving up. The next one in the chain  
25 is from Mr. Finkenstaedt, right? It's not the



1 next one up in the chain, but I want to move up  
2 to Mr. Finkenstaedt.

3 Mr. Finkenstaedt is sounding an alarm,  
4 right?

5 A. Well, he's saying "STOP."

6 Q. "STOP" in big, all cap letters, with an  
7 explanation point, right?

8 A. I don't see the exclamation point, but --

9 Q. You're right. It's the problem with  
10 bifocals.

11 And Mr. Finkenstaedt, who is at the  
12 May 23rd meeting, says, This is not what was  
13 discussed with Wanda. Right?

14 A. Yes.

15 Q. Other than the May 23rd meeting, had you had  
16 discussions with Mr. Finkenstaedt and  
17 Ms. Speight together about who was going to do  
18 the risk ratings?

19 A. I don't think Mr. Finkenstaedt was in any  
20 other meetings other than that, May 23rd.

21 Q. So when he says this is not what was  
22 discussed with Wanda, he must have been  
23 referring to what was discussed in the May 23rd  
24 meeting?

25 A. I believe so.

1 Q. And Mr. Finkenstaedt says, Risk ratings  
2 belong to Asset Management and RES, right?

3 A. Correct.

4 Q. And that's very different than what you just  
5 told me before, right? You thought Asset  
6 Management only belonged to Ms. Speight's group?

7 A. I think the responsibility lies with Asset  
8 Management. Real Estate Solutions would  
9 contribute to those risk ratings, but the  
10 responsibility lies with the Asset Management  
11 Group.

12 Q. So the problem is in the words "belong to."  
13 There's a little ambiguity there?

14 A. Well, I don't know what -- it's Ned's  
15 e-mail. It's not mine.

16 Q. Would you agree with me that it appears that  
17 Mr. Finkenstaedt had a different takeaway, as a  
18 result of the May 23rd meeting, as to whether  
19 risk ratings would be done exclusively by  
20 Ms. Speight's group or shared between  
21 Ms. Speight's group and RES solutions?

22 A. Do I agree with you that he had a different  
23 takeaway?

24 Q. That it appears that he had a different  
25 takeaway.

1 A. Well, I think that the basis of his e-mail  
2 is that he was in agreement with me.

3 Q. Well, you said it was exclusively Asset  
4 Management, right?

5 A. The responsibility for the process lies with  
6 Asset Management.

7 Q. Okay. And he is saying, risk ratings belong  
8 to Asset Management and RES.

9 A. I see that.

10 Q. Right. And you don't think that's  
11 disagreeing with your view that Asset Management  
12 or risk ratings belong exclusively to Asset  
13 Management?

14 A. I mean, it says what it says. I guess that  
15 was his -- you know, I don't know why he chose  
16 the words that he chose.

17 Q. Okay. Would you agree with me that it  
18 appears, at least on first blush, that he seems  
19 to have a different final take on it than you  
20 do?

21 A. No, I don't agree with that.

22 Q. But he says, "Risk ratings belong to Asset  
23 Management and RES."

24 A. I see that, yes.

25 Q. Are you saying that risk ratings could

1 actually belong to RES, but ultimately have to  
2 be defended by Asset Management?

3 A. The responsibility for the process of risk  
4 ratings lies with Asset Management.

5 Q. I'm not talking about the responsibility of  
6 the process.

7 A. But that's what I have been speaking to.

8 Q. I'm talking about doing the risk ratings  
9 themselves, the actual function/task itself of  
10 doing a risk rating.

11 Do you agree with me that  
12 Mr. Finkenstaedt, by his e-mail, is saying,  
13 Gee, I thought that the actual doing of the risk  
14 rating could be either RES or Asset Management?

15 A. That's what he is saying there.

16 Q. And that wasn't your view at all, right?  
17 You didn't think even the risk ratings  
18 themselves should be done by RES, correct?

19 A. Correct.

20 Q. So you and he are having apparently a  
21 miscommunication about what you decided in the  
22 February 23rd meeting with Wanda, right?

23 A. I don't know what he meant by his e-mail, so  
24 I don't know if we miscommunicated or not.

25 Q. You would agree with me that by his e-mail

1 he meant, We're going to do the risk ratings  
2 too, and Wanda's group is too, that that  
3 certainly wasn't what you thought you had  
4 communicated in the May 23rd meeting?

5 A. No. I think Ned is Mr. Finkenstaedt.  
6 Sorry.

7 His e-mail was simply saying that the  
8 Client Relations team is not responsible for  
9 this. That's how he took this e-mail.

10 Q. That's not what he says. He says, "The risk  
11 ratings belong to Asset Management and RES."

12 MR. BANKS: Objection.

13 THE COURT: You're becoming  
14 argumentative, now, counsel. You can move on.

15 BY MR. SALMANSON:

16 Q. And he does agree with you, right, that, as  
17 you just said, Asset Management duties to Client  
18 Relations, "Please don't assign Asset Management  
19 duties to Client Relations without discussing  
20 them with me first. Moving these duties around  
21 is a slippery slope, and I want to make sure  
22 that we are disciplined in our decision-making."

23 Right?

24 A. Yes.

25 Q. You agreed with that, right?

1 A. I do.

2 Q. Do you know whether Ms. Speight agreed with  
3 that?

4 A. I don't know.

5 Q. Now, up until this point, Ms. Speight hadn't  
6 chimed in, right?

7 A. Not that I'm aware of.

8 Q. So you're next on the e-mail chain, and  
9 you're actually responding to Mr. Finkenstaedt's  
10 e-mail, right?

11 A. Correct.

12 Q. What you say to Mr. Finkenstaedt is, "All  
13 risk ratings will be done by the Asset  
14 Management Group."

15 Right? That's your first line?

16 A. Correct.

17 Q. So you're, in fact, telling  
18 Mr. Finkenstaedt, you know what, Ned, you got it  
19 wrong. I don't want it to be RES. If he does  
20 have it wrong. I don't want it to be RES or  
21 Asset Management. I want them all done by Asset  
22 Management, right?

23 A. No, I don't agree with that. I'm not just  
24 telling Ned. I think I'm providing clarity to  
25 the group that I've e-mailed.

1 Q. Okay. Providing clarity to the group,  
2 because you would agree with that up until then  
3 there was a lack of clarity?

4 A. I think, at this point, it was appropriate  
5 for me to respond to an e-mail.

6 Q. All right. Because there was a lack of  
7 clarity, right?

8 A. I don't know about "lack of clarity" or not.  
9 I was providing -- I was responding to an e-mail  
10 chain.

11 Q. And by "responding," you were providing  
12 clarity, right?

13 A. I was attempting to.

14 Q. You also say, "Ned, Wanda, Clare and I are  
15 in the process of identifying the specific  
16 functionalities to be assigned to the various  
17 groups, i.e., CAG to complete financials; RES to  
18 handle special requests; SPM to take the first  
19 cut on the watch lists, et cetera. While we  
20 have not completed that assessment, I thought we  
21 were all on the same page that the Asset  
22 Management team is and will continue to be  
23 responsible for daily borrower interaction, as  
24 well as the risk rating process."

25 Now, when you said you thought we were

1 all on the same page, you're referring to having  
2 been on the same page as a result of the  
3 May 23rd meeting, right?

4 A. I believe so. That was the most recent  
5 meeting.

6 Q. It appeared to you, in fact, that maybe Ned  
7 wasn't on the same page?

8 A. I don't think I had that thought.

9 Q. Well, you don't know whether Wanda is on the  
10 same page or not, yet, right, because she hadn't  
11 chimed in yet?

12 A. Correct.

13 Q. So when you're saying I thought we were all  
14 on the same page, who are you directing that to  
15 you?

16 A. Ned, Tony, Wanda, Michael, and Clare.

17 Q. Now, Wanda responds, right?

18 A. Correct.

19 Q. And you would agree with me that but for  
20 Wanda sending this e-mail, she would not have  
21 been terminated?

22 A. Yes, I would agree.

23 Q. Do you believe this e-mail was  
24 unprofessional?

25 A. Yes.



1 Q. Do you believe it was uncooperative?

2 A. Yes.

3 Q. Do you believe it was insubordinate?

4 A. Yes.

5 Q. Okay. Let's go through it. Her first line  
6 says, "Sorry for the communications breakdown.  
7 Let me try again."

8 Would you agree with me that, based on  
9 the e-mail string, there had been a  
10 communications breakdown?

11 A. No. Not in my mind.

12 Q. Well, you got Ned saying risk ratings belong  
13 to either RES or Asset Management, and you have  
14 you saying, I thought we all agreed that we were  
15 all on the same page. That was just Asset  
16 Management.

17 A. Okay.

18 Q. So there's something of a communications  
19 breakdown, right?

20 A. Okay.

21 Q. Okay. Let me try again, right?

22 When you read that, did you think that  
23 it was sarcastic?

24 A. Absolutely.

25 Q. Now, how did you come to that conclusion?

1 A. Well, the way I received it is the way I  
2 received it now. It's the same way, "Sorry for  
3 the communications breakdown. Let me try  
4 again."

5 You didn't hear me the first time, so  
6 let me tell you again what we're going to do.

7 Q. Well, you hadn't heard from her yet.

8 A. This is the response that I got from all --  
9 this is the first time I'm hearing from her on  
10 this topic, yes.

11 Q. Right. Right. So it can't be, You're not  
12 hearing from me for the first time, or you  
13 didn't hear me the first time, because this is  
14 the first time, right?

15 A. No, because I'm referring, as you said, to  
16 the May 23rd meeting, and I believe Wanda was  
17 referring to that as well.

18 Q. There couldn't have been a communications  
19 breakdown between you and her in the string of  
20 e-mails because she hadn't commented yet, right?

21 A. Not in the string of e-mails, correct.

22 Q. So she can't be sarcastically saying, sorry  
23 for the communications breakdown between you and  
24 me, because you and she haven't yet communicated  
25 in this string yet, right?

1 MR. BANKS: Objection. He's going to  
2 be arguing with the witness at this point.

3 THE COURT: I'm going to overrule.  
4 There seems to be some inability to understand  
5 the question. We'll allow it.

6 THE WITNESS: I think this goes beyond  
7 an e-mail chain. That's what we're talking  
8 about.

9 BY MR. SALMANSON:

10 Q. So you're feeding it based on what happened  
11 based on May 23rd.

12 You're reading it in light of what you  
13 think happened on May 23rd?

14 A. I think that was the spirit in which I wrote  
15 the e-mail to begin with that Wanda was  
16 responding to.

17 Q. Her next line is, The Canadian --

18 MR. BANKS: Mr. Salmanson, maybe I  
19 should direct this to the Court. We do have a  
20 bigger blow-up. I do notice that some of the  
21 jurors are straining to read it.

22 Would it be helpful if we can put up  
23 the bigger one?

24 MR. SALMANSON: That would be great.

25 MR. BANKS: Let me just see which on is

1 here.

2 THE COURT: Members of the jury, can  
3 you see that exhibit as it exists? Thank you.

4 MR. SALMANSON: Yes?

5 THE COURT: Yes, it's fine. Let's get  
6 around here, and ask the witness some questions.

7 BY MR. SALMANSON:

8 Q. The next sentence says, "The Canadian loans  
9 and the SPG loans" -- in bold, underlined --  
10 **"are not** being asset-managed by any one of the  
11 former PLG Asset Management team."

12 Now, as of May 25th, that was a true  
13 statement, right?

14 A. As of May 25th, I think it was.

15 Q. So Wanda is just reiterating that, as of  
16 that date, they weren't being asset-managed by  
17 her group, right?

18 A. Yes.

19 Q. And at that point, if they weren't being  
20 asset-managed, that wasn't because she was  
21 disobeying any directive to you up to this  
22 point, right?

23 A. I'm sorry, I'm not following.

24 Q. Sure. As I said that, I realized it.

25 As of up to May 25th, if they weren't

1 being asset-managed by Ms. Speight's group, it  
2 wasn't -- if she had had them being  
3 asset-managed by somebody else, that wasn't  
4 contrary to any directive of yours, right?

5 A. Correct.

6 Q. Do you know how often the risk ratings are  
7 done?

8 A. Quarterly.

9 Q. They are done quarterly because a lot can  
10 happen in one quarter, right?

11 A. Absolutely.

12 Q. You have to be really on top of the loans in  
13 order to be able to risk rate them, right?

14 A. Correct.

15 Q. You have to know what happened in those  
16 previous 60, 90 days leading up to the risk  
17 ratings, right?

18 A. Yes.

19 Q. So she says in the next sentence,  
20 "Consequently, the former PLG Asset Management  
21 individuals are not in a position to perform an  
22 evaluation for risk rating purposes."

23 You just agreed with me on that, right?  
24 If they hadn't been asset managing the loans,  
25 they wouldn't be in a position to perform the

1 ratings for the risk ratings purposes, right?

2 A. Performing the risk ratings requires  
3 knowledge of the process, as well as the asset.

4 Q. And you just said to me, if they didn't have  
5 the knowledge of the asset of the previous 60 or  
6 90 days, they wouldn't have the knowledge to  
7 perform the risk rating, right?

8 A. No, I don't necessarily agree with that.  
9 They would have to take the steps necessary to  
10 gain the understanding.

11 Q. But as of May 25th, if they hadn't -- I'm  
12 talking about present tense, right?

13 It's may 25th that they hadn't been  
14 asset-managing the loans for the last 60 or 90  
15 days, so they wouldn't be in a position to risk  
16 rate the loans, right, without getting back on  
17 top of that?

18 A. That's what they would have been required to  
19 do.

20 Q. Right. If they came back with that, right?  
21 This is a present tense statement, would you  
22 agree?

23 A. I would agree it's present tense, yes.

24 Q. Do you agree with me that she's saying as of  
25 May 25th, that her asset managers are not in any

1 position to perform an evaluation for risk  
2 rating purposes, because they hadn't been  
3 handling the loans for the last 60 or 90 days,  
4 right?

5 A. I think that the distinction is the former  
6 PLG Asset Management in the business.

7 Q. Well, by that she's referring to her team,  
8 right?

9 A. Correct.

10 Q. And as far as you knew, nobody on her team  
11 was asset-managing those assets as of May 25th?

12 A. I believe that's correct, yes.

13 Q. So they are not in a position to risk rate  
14 assets that they haven't been managing during  
15 that time period, right?

16 A. Well, as of May 25th, they may not have  
17 been, but --

18 MR. BANKS: Can he let the witness  
19 finish his answer?

20 THE COURT: Very well.

21 THE WITNESS: As of May 25th, they  
22 wouldn't have been, but the risk ratings were  
23 due in June.

24 BY MR. SALMANSON:

25 Q. Right. So when she's saying, present tense,

1 "my folks aren't in a position to do this," as  
2 of May 25th, you agree with her, right, unless  
3 they came back -- sorry. Go ahead.

4 A. Taking that statement as a stand-alone  
5 statement, yes.

6 Q. Okay. Her next sentence says, "I hope that  
7 I am not being told by Capmark Management to  
8 sign-off on reserves and provide risk ratings on  
9 a portfolio of loans, for which my staff has no  
10 knowledge."

11 Now, you would agree with me that it  
12 would be a really bad idea for her to have to  
13 talk about reserves and set up risk ratings for  
14 loans for which she had no knowledge, right?

15 A. Yes.

16 Q. And you would share that hope that nobody in  
17 Capmark Management was going to tell her that,  
18 right?

19 A. I would share -- I'm sorry?

20 Q. The hope that she's not being told by  
21 someone in Capmark Management that I need to do  
22 risk ratings on loans that my staff has no  
23 knowledge on, right?

24 A. I'm not following you. I'm sorry.

25 Q. Let's go back to the exact language. She



1 says, "I would hope that I am not being told by  
2 Capmark Management to sign-off on reserves and  
3 provide risk ratings on a portfolio of loans for  
4 which my staff has no knowledge."

5 Right?

6 A. Yes.

7 Q. You would agree with her that -- you would  
8 hope that she's not being told -- and I'm not  
9 saying that she was being told, but that she's  
10 not being told by Capmark Management to sign off  
11 on reserves and provide risk ratings on a  
12 portfolio of loans for which she had no  
13 knowledge, right, you would agree with that?

14 A. Yeah, believe me, I'm not trying to be  
15 difficult. I'm having a lot of trouble  
16 following your question.

17 I see what's written here. I just  
18 don't know what your question is.

19 Q. Okay. My question is, Do you agree with  
20 that statement that you would hope -- you would  
21 share that hope?

22 A. Yes. Okay, thank you. Yes.

23 Q. Okay. Then she says -- and she directs it  
24 to you, "Mark, again, the Asset Management team  
25 is and will continue to be responsible for daily

1 borrower interaction, as well as the risk rating  
2 process for its existing portfolio."

3 Now, am I correct that you took that as  
4 being insubordinate?

5 A. Yes.

6 Q. And it's because you interpreted it as  
7 saying she would not take on any additional  
8 assignments?

9 A. Correct.

10 Q. Does she actually say she's not taking on  
11 any additional assignments?

12 A. I believe she does.

13 Q. Where does she say that?

14 A. Paraphrasing, they will continue to be  
15 responsible for their existing portfolio.

16 Q. So you're inferring from that, that she's  
17 not going to take on any other additional  
18 portfolio?

19 A. Yes.

20 Q. Okay. Now, at the time she wrote that, you  
21 knew that she was already not being able to have  
22 enough personnel to handle the risk ratings for  
23 all the portfolios that had been previously  
24 assigned to her, right?

25 A. No, I don't agree with that.

1 Q. Well, you knew that part of the orphan loan,  
2 the SPG portfolio had all been assigned to her,  
3 and she had ended up getting some people  
4 assigned to her to help her with the orphan  
5 loans, right?

6 A. Yes.

7 Q. And she had been telling you that she was  
8 shorthanded throughout this time period, right?

9 A. She had said that, yes.

10 Q. And you never said to her, You have to  
11 handle whatever we give to you, each and every  
12 loan. You can't go and get that assigned to  
13 anybody else, right?

14 A. No, I never said that.

15 Q. So are you saying that she's being  
16 insubordinate because in your e-mail and the  
17 prior e-mail you made it clear that she was  
18 going to do the asset management for every set  
19 of loans that came her way?

20 A. Well, at this point, we had agreed, or at  
21 least I thought we had agreed, that the  
22 assignment of responsibilities was -- at least,  
23 at this point, was becoming more clear, and she  
24 was putting it out there that she was not  
25 willing to do any additional work.

1 Q. You said "it was becoming more clear."

2 It wasn't clear yet, right?

3 A. The assignment of responsibilities in the  
4 meetings that we had had all through May, we  
5 were working towards identifying the specific  
6 tasks.

7 Q. It was becoming more clear. It wasn't clear  
8 yet?

9 A. In my mind it was clear.

10 Q. Well, it was clear, as of May 20th, when you  
11 sent that e-mail?

12 A. I believe so.

13 Q. Okay. It wasn't clear before that because  
14 Mr. Finkenstaedt had a different view as of May  
15 23rd, right?

16 A. I disagree.

17 Q. Then she writes a separate paragraph to  
18 Mr. Hohenleitner, right?

19 A. Correct.

20 Q. And Mr. Hohenleitner was in the Credit  
21 Department?

22 A. Correct.

23 Q. Ultimately, Ms. Speight had to defend the  
24 risk ratings to the Credit Department, correct?

25 A. That's correct.

1 Q. Just so we're clear, the Credit Department  
2 is part of GMAC CM or Capmark, correct?

3 A. That's correct.

4 Q. They are all on the same team, correct?

5 A. We're all different departments.

6 Q. All working towards the same ultimate goal,  
7 right, making GMAC CM profitable, right?

8 A. We all have responsibilities that we're  
9 contributing, yes.

10 Q. And part of Ms. Speight's responsibilities  
11 is in providing the risk ratings, the Credit  
12 Department is making sure that the Credit  
13 Department understands -- well, her  
14 responsibility is to provide as accurate as  
15 possible risk ratings to the Credit Department,  
16 right?

17 A. That's part of the responsibility, yes.

18 Q. That's a big part of her job function, isn't  
19 it?

20 A. Yes, it would have been.

21 Q. And would you expect her, if she had  
22 concerns about performing that job function for  
23 the Credit department, that she would reach out  
24 to the Credit Department and say, I have some  
25 concerns here?

1 A. No, I wouldn't expect that at all.

2 Q. You would expect her to just be quiet?

3 A. Well, we're referring to the exhibit,  
4 correct?

5 Q. Yes.

6 A. No. I did not expect Mr. Hohenleitner to be  
7 copied here at all.

8 Q. Do you know whether Ms. Speight and  
9 Mr. Hohenleitner had had any previous  
10 discussions about the risk rating process?

11 A. Ever or --

12 Q. Ever.

13 A. I'm sure they had.

14 Q. Okay. Do you know whether they, within the  
15 previous couple of weeks, had shared concerns  
16 about whether the risk rating process for all  
17 the portfolio was going to get done in an  
18 adequate way?

19 A. I have no idea.

20 Q. Okay. So you don't know if, in fact,  
21 Ms. Speight, including Mr. Hohenleitner --  
22 because Mr. Hohenleitner had, in fact, just  
23 recently expressed concerns to her about the  
24 risk ratings?

25 A. I don't know that.

1 Q. Okay. And if he had just done that, do you  
2 think it would have been appropriate for her to  
3 keep Mr. Hohenleitner apprised of what was going  
4 on?

5 A. Not in this way.

6 Q. Well, how should she have done it?

7 A. There are a number of ways that would have  
8 been more appropriate.

9 Q. What was inappropriate about him being  
10 copied on the e-mail?

11 A. Well, and by "him," meaning --

12 Q. Mr. Hohenleitner.

13 A. And then Maria Menarde and Beth Coady, who  
14 were also CC'd. They are all part of the Credit  
15 team. Up to this point, they hadn't been, I  
16 don't believe, part of the e-mail train, and to  
17 escalate this type of correspondence to your  
18 client is -- to say "inflammatory," is an  
19 understatement.

20 Q. Let's look back. Do you see if  
21 Mr. Hohenleitner was included by anybody else in  
22 the e-mail string?

23 A. Perhaps initially, but by the time we were  
24 discussing with any degree of detail, he was not  
25 part of that.

1 Q. Let's go through from back to front. Tell  
2 me if anybody else had included Mr. Hohenleitner  
3 in the e-mail string.

4 A. Tell you what? I'm sorry.

5 Q. If anybody else had included  
6 Mr. Hohenleitner in the e-mail string.

7 A. It appears Don Nienas did on May 24th.

8 Q. Mr. Nienas was the only other person in  
9 Wanda's group who participated in this string,  
10 correct?

11 A. The only one of her direct reports, or just  
12 in her group?

13 Q. In her group, who is actually writing, not  
14 just being cc'd, but writing in this string,  
15 right?

16 A. Yes.

17 Q. So do you know whether Ms. Speight and her  
18 group typically would CC Mr. Hohenleitner on  
19 issues related to risk ratings?

20 A. I don't know.

21 Q. You never told her, Hey, look, if you're  
22 having problems with the risk rating, don't  
23 include Mr. Hohenleitner. Right?

24 A. No.

25 Q. It would be okay, generally, to CC



1 Mr. Hohenleitner, to let him know about staffing  
2 issues or who is staffing the risk ratings,  
3 right?

4 A. Well, I don't know. I mean,  
5 Mr. Hohenleitner, in this case, is the client.  
6 So you would have to treat the client with --  
7 and certainly keeping the client informed, but  
8 whether or not you would copy him on internal  
9 correspondence, I think, is different.

10 Q. Internal correspondence? These are all GMAC  
11 people, right? She is not saying to the outside  
12 world, I can't do the job. Right?

13 She's telling the person to whom she  
14 owes that responsibility to, ultimately, right?

15 I mean, you keep calling him a client.  
16 He's the one -- she's responsible to him for  
17 this, right, and her group?

18 A. I would say she's responsible for providing  
19 the data to his group so they can analyze that  
20 data and --

21 Q. She's just not handing him raw data. She  
22 does the risk ratings, right?

23 A. I think they make the recommendation that  
24 the Credit Committee meets.

25 Q. She provides the score, right?

1 A. Correct.

2 Q. And she gets in front of the Credit  
3 Committee, and they hammer her with questions,  
4 right?

5 A. Absolutely.

6 Q. And she has to be prepared to defend them?

7 A. Yes.

8 Q. And that can be sort of brutal, can't it?

9 A. At times, the questions are pretty intense.

10 Q. So if you were in Wanda's shoes, you want to  
11 be darn sure that you would be able to defend  
12 those risk ratings?

13 A. Yes, I would agree.

14 Q. She didn't just have to defend those risk  
15 ratings to the committee, right? There were  
16 times when she had to defend them to the outside  
17 auditors?

18 A. Yes.

19 Q. Isn't it true that just a couple of months  
20 earlier, they had gotten comments from the  
21 outside auditors that said, you better be  
22 careful, more careful, about documenting your  
23 risk ratings?

24 A. I'm not aware of that.

25 Q. Now, she says, "Joe, please be aware if we

1 are being told to risk rate the SPG loans and  
2 the Canadian portfolio, I cannot be confident in  
3 the accuracy of the assigned ratings, nor can we  
4 be expected to defend such ratings, given our  
5 lack of knowledge and experience with this  
6 portfolio."

7 Now, we're talking specifically about  
8 this particular quarter's risk ratings, right?

9 A. Correct.

10 Q. You didn't interpret that as forever, right?

11 A. No. I would say we're talking about the  
12 current quarter or current in that sense.

13 Q. Other than the fact that she is addressing  
14 this to Joe, who you say is outside the group,  
15 you don't disagree with her, if she says, if I  
16 have to risk rate these SPG loans and Canadian  
17 portfolio, which I'm going to have to do in  
18 about two and a half weeks, I can't have the  
19 same confidence level and the accuracy of the  
20 ratings and don't expect me to defend the  
21 ratings because I don't have a knowledge or  
22 experience with this portfolio over this quarter  
23 for which we are doing the risk ratings.

24 Isn't that fair?

25 A. No. You know, I look at this, and it upsets

1 me as much today as the day I saw it.

2 Q. You don't think it's fair -- the question  
3 is, Do you think it's fair, not whether or not  
4 it upsets you.

5 Do you think it's fair for her to say,  
6 I am not sure I can do this at the level that  
7 I'm expected to do this, because I don't know  
8 this portfolio?

9 A. No, I don't think it's fair.

10 Q. Because, as of May 25th, did she have  
11 knowledge of the portfolio, to your knowledge,  
12 of these two sets of loans?

13 A. I don't know if Wanda had specific knowledge  
14 on May 25th about those two loans.

15 Q. Do you know whether anybody in her group had  
16 specific knowledge of those two portfolios for  
17 that quarter?

18 A. I don't know. Wanda's group was responsible  
19 for the risk ratings within that portfolio, and  
20 I would have expected that she would take steps,  
21 which she did, to make sure that they were going  
22 to be handled, managed.

23 Q. But you would agree with me, on May 25th, it  
24 wasn't clear whether she was going to have  
25 responsibility for the risk ratings of those

1 portfolios?

2 A. No, I don't agree with you.

3 Q. You respond to Ms. Speight and you say, "We  
4 obviously need to talk. Are you available to  
5 discuss this e-mail string and the meeting from  
6 Tuesday?" Correct?

7 A. Correct.

8 Q. At the time that you wrote that -- well,  
9 first of all, she wrote the e-mail on May 25th  
10 at 5:33.

11 I believe you testified in your  
12 deposition that you don't think you saw it until  
13 the next morning, correct --

14 A. That's correct.

15 Q. -- when you got to work?

16 A. Correct.

17 Q. So you're responding to Wanda Speight. You  
18 come in, in the morning, you see your e-mails  
19 and you see this e-mail, correct?

20 A. Correct.

21 Q. And would you agree with me that when you  
22 read it, your initial thought was, we obviously  
23 need to sit down and clear the air?

24 A. I don't remember what my frame of mind was  
25 at that time, but it was upsetting, and I

1       replied that we needed to talk. Obviously, we  
2       needed to talk.

3       Q. And it wasn't your intent to say, we need to  
4       talk because I need to terminate you, right?

5       A. No, it wasn't.

6       Q. You took the e-mail, and you went to  
7       Mr. Lipson's office, right?

8       A. Sometime later, yes.

9       Q. Okay. And what happened in Mr. Lipson's  
10      office?

11      A. Well, I had printed the e-mail. And when he  
12      came in, I went in, showed him the e-mail. He  
13      read it, and I believe he called Linda Pickles.

14      Q. Now, do you recall discussing with him the  
15      events leading up to the e-mail?

16      A. Prior to receiving the e-mail?

17      Q. No, I'm sorry. Sorry. When you brought the  
18      e-mail to him, did you just -- let's just be  
19      clear.

20                Do you recall whether you gave him just  
21      Wanda's e-mail, or whether you gave him the  
22      whole e-mail string?

23      A. I think I had hit the print button, which  
24      meant that it would print the entire document.

25      Q. Okay. Do you recall having a discussion

1 with Mr. Lipson about the e-mail itself? In  
2 other words, you didn't just hand it to him and  
3 say, this is what I got from Wanda, but did you  
4 talk about the content of the e-mail?

5 A. I'm sure I did, yes.

6 Q. As you sit here today, do you have any  
7 recollection about any specific discussion with  
8 him about the content?

9 A. No, I don't.

10 Q. Do you recall whether you tried to put the  
11 e-mail in context?

12 A. I don't know.

13 Q. Do you recall whether you talked to him  
14 about the May 23rd meeting?

15 A. No, I don't.

16 Q. Were you present when Mr. Lipson talked to  
17 Ms. Pickles on the phone?

18 A. I don't think I was.

19 Q. Were you still in the room when he got off  
20 the phone? I'm sorry. You said you didn't  
21 think you were there.

22 A. Right.

23 Q. So you left. He was calling Ms. Pickles,  
24 and you left?

25 A. That's correct. That's my recollection.

1 Q. And what do you recall next happening in  
2 regard to Ms. Speight?

3 A. My being advised that she was going to be  
4 terminated.

5 Q. Now, prior to that, do you have a  
6 recollection that Mr. Lipson sought your  
7 recommendation as to whether she should be  
8 terminated or not?

9 A. No, no.

10 Q. Do you recall whether you told him that you  
11 concurred with that decision?

12 A. I don't know if I told him that or not.

13 Q. Is it your opinion that this e-mail,  
14 standing alone, putting aside what had happened  
15 on May 23rd, do you believe that this e-mail,  
16 standing alone, would have merited Ms. Speight's  
17 termination?

18 A. I don't know.

19 Q. Do you believe that Ms. Speight's  
20 termination was appropriate?

21 A. I do.

22 Q. To your knowledge, until she was told that  
23 she was terminated, Ms. Speight hadn't received  
24 any performance counsel, had she?

25 A. No, I don't think so.



1 Q. To your knowledge, had anybody talked to her  
2 about her alleged poor attitude?

3 A. I don't believe so.

4 Q. Now, you had already had a meeting scheduled  
5 with Human Resources and Ms. Speight for  
6 May 26th, correct?

7 A. I don't know if it was already done. I  
8 believe it was scheduled.

9 Q. Okay.

10 A. I don't know what time it was scheduled.

11 Q. Okay. Do you recall that you decided to  
12 turn that meeting into the termination meeting?

13 A. Well, that was the end result of the  
14 meeting.

15 Q. Do you recall, other than the Canadian loan  
16 portfolio, there weren't any other issues  
17 regarding loans for which Mr. Speight's team had  
18 responsibility, were there?

19 A. Any other issues?

20 Q. Yes.

21 A. Well, it was a very active portfolio, so it  
22 was actively managed.

23 Q. And the question is, other than the issues  
24 related to the Canadian loan portfolio, you  
25 didn't have any idea that there were any other

1 issues regarding the loans for which she had a  
2 responsibility, do you?

3 A. I'm not sure I know what you mean by  
4 "issues."

5 In my opinion, there was -- again, it  
6 was an actively managed portfolio, so there were  
7 a myriad of issues that would come up every day.

8 Q. Okay. But in terms of her refusal to take  
9 on responsibility for the portfolio, or anything  
10 like that -- an issue with the way that  
11 Ms. Speight was handling her portfolio?

12 A. No, not that I'm aware of.

13 Q. Okay. Prior to receiving this e-mail, you  
14 hadn't had any discussions with anyone about the  
15 possibility of terminating Ms. Speight, had you?

16 A. No.

17 Q. I hear you're a soccer coach, correct?

18 A. Among other things, yes.

19 Q. Now, soccer, we have the concept of getting  
20 a yellow card if you commit a foul, and you get  
21 one of those before you get red-carded, right --

22 A. Yep. Well, it depends --

23 Q. -- except -- except -- you anticipated --  
24 you get a red card for a flagrant foul, right?

25 A. Correct.

1 Q. Did you think that Ms. Speight deserved to  
2 be yellow carded for this e-mail and for  
3 May 23rd, rather than throwing down the red card  
4 as the first throw?

5 A. I don't know. I don't recall exactly how I  
6 felt at that time. It wasn't my decision. So I  
7 don't know.

8 Q. Well, you concurred in the recommendation  
9 that she be fired, right?

10 A. I do agree that she should have been fired.

11 Q. And you concurred back then, right?

12 A. Well, I concurred with the decision, yeah.

13 Q. Okay. Now, you would agree with me that  
14 officially Ms. Speight was not terminated for  
15 insubordination, correct?

16 A. Officially?

17 Q. Yes. Capmark's actual HR records don't say  
18 she was terminated for insubordination, right?

19 A. I don't know if I know that record.

20 Q. Before we get there, I forgot to ask you  
21 about the termination meeting.

22 The termination meeting was short,  
23 right?

24 A. Yes, it was.

25 Q. It was you, Mr. Zurick, Ms. Speight?

1 A. Correct.

2 Q. And in those termination meetings, you  
3 always want to be honest with the employee,  
4 right?

5 A. Certainly.

6 Q. You are always honest with the employees,  
7 right?

8 A. Yes.

9 Q. In that meeting, if I can direct your  
10 attention to P-78.

11 A. Okay.

12 Q. This is a memo that Mr. Zurick wrote to the  
13 file. He testified yesterday regarding the  
14 termination meeting.

15 It says, "Mark informed Wanda that he  
16 had planned on meeting with her regarding the  
17 events that took place during the meeting on  
18 Tuesday, 5-23-06. See file.

19 "However, Mark stated that after he  
20 received Wanda's e-mail on Thursday, 5-25, he  
21 realized that, quote, it was not going to work  
22 out, unquote.

23 "Mark informed Wanda that he had  
24 certain expectations from her, and wanted  
25 someone that was committed to the group.

1 "Wanda was not meeting his expectations  
2 and did not appear to be committed."

3 Do you disagree that that is what you  
4 said on May 26th?

5 A. That it was not going to work out?

6 Q. Right. That you had concluded that it was  
7 not going to work out?

8 A. Well, I don't remember what I said, but it  
9 was probably something along those lines.

10 Q. Okay. And part of the purpose of the  
11 termination meeting is to tell the employee why  
12 they are being fired, right?

13 A. Yes.

14 Q. And you didn't say, Mr. Lipson decided to  
15 fire you, right?

16 A. Well, Wanda reported to me, so I would have  
17 been the one delivering that message.

18 Q. Right. The message that Mr. Lipson had  
19 decided to fire her as the result of the e-mail,  
20 right?

21 A. Correct.

22 Q. That's your view that Mr. Lipson made the  
23 decision?

24 A. Absolutely.

25 Q. But that's not what you told her, right, in

1 the meeting? You said that after you saw the  
2 e-mail, you realized it wasn't going to work  
3 out, right?

4 A. Well, that's what it says, yes.

5 Q. The point of that was to convey that you had  
6 made the subjective determination that, based on  
7 her e-mail and the meeting, it wasn't going to  
8 work out so you wanted her to go, correct?

9 A. Well, I don't know what the point of this  
10 was. I didn't make the decision to terminate  
11 Wanda.

12 Q. But part of the point of the meeting is to  
13 tell her why she's being terminated, right?

14 A. Because she was a direct report of mine,  
15 that would be common practice.

16 Q. But you didn't tell her why she was being  
17 terminated, right? You didn't tell her that  
18 Mr. Lipson thinks you were insubordinate,  
19 Mr. Lipson decided to terminate her.

20 You gave her the impression that you  
21 had concluded that it wasn't going to work out.

22 A. I don't know what impression I gave her.  
23 The meeting was probably too brief to give much  
24 of an impression.

25 Q. Well, do you agree that one of the things

1 that is supposed to go on in the termination  
2 meeting is to give Ms. Speight an opportunity to  
3 say, you're wrong, you misunderstood?

4 A. Typically, that would be what would happen.

5 Q. And that's one of the points in the meeting,  
6 right?

7 A. Well, the meeting would be to convey the  
8 message that the decision was made that she  
9 should be terminated.

10 Q. And, presumably, the decision would have  
11 been made by someone, right? She can't say,  
12 so-and-so is wrong or whatever, if she doesn't  
13 know who the decision-maker is?

14 A. I don't agree with that. I think in that  
15 example Mr. Lipson would have to be in every  
16 termination meeting in the office, right, if he  
17 is the ultimate authority?

18 Q. No, no. You could say to her, Mr. Lipson  
19 made this decision. He decided when he saw your  
20 e-mail to fire you.

21 Right?

22 A. I guess I could have said that.

23 Q. Right.

24 A. Yeah.

25 Q. And, as you sit here today, you say, that's

1 the truth, right? That's what happened.

2 Mr. Lipson saw the e-mail, and he decided to  
3 fire you?

4 A. That's right.

5 Q. But that's not what you told her. You said,  
6 after I got -- after the May 23rd meeting and I  
7 got the e-mail, I decided it wasn't going to  
8 work out?

9 A. Well, I didn't say in here that I decided  
10 anything.

11 Q. But you had decided based on the May 23rd  
12 meeting and the e-mail that it wasn't going to  
13 work out, right?

14 A. I didn't make a decision related to Wanda's  
15 termination.

16 Q. I'm not asking what you decided. I'm asking  
17 what you told her.

18 A. And, again, I don't remember what I told  
19 her. It says here that I said it's not going to  
20 work out, or I realize it's not going to work  
21 out.

22 Q. Now, Mr. Zurick says, "Wanda replied, Okay."

23 And then Mr. Zurick says, "I informed  
24 Wanda that she had done nothing egregious and  
25 was not being terminated for cause."



1 Do you remember Mr. Zurick saying that?

2 A. Not really.

3 Q. Do you agree with him that she was not being  
4 terminated for anything egregious?

5 A. No, I don't agree.

6 Q. And do you agree with him that she was not  
7 being terminated for cause?

8 A. No, I don't agree.

9 Q. So you're saying that Mr. Zurick wasn't  
10 being honest with Ms. Speight when he told her  
11 that?

12 A. No, that's not what I'm saying. I'm sure he  
13 had his own impressions. I don't recall what he  
14 said, so I don't know.

15 Q. And "Mr. Zurick then informed Ms. Speight  
16 what benefits she was entitled to. She asked  
17 for something in writing, and I handed her the  
18 severance documents that I had prepared."

19 Do you recall that?

20 A. Yes.

21 Q. "He told Wanda, if she wanted the severance  
22 amount, she would have to sign and return a  
23 release, a waiver of her claims," right?

24 A. Yes, I recall something like that.

25 Q. And do you recall that Mr. Zurick said to

1 her, "You need to get an attorney to review  
2 this"?

3 A. No.

4 Q. The next sentence says, "Wanda stated that  
5 her lawyer would be reviewing the release  
6 agreement. I advised Wanda to call me if she  
7 had any other questions."

8 And your recollection is that Wanda  
9 responded simply, "You'll be hearing from my  
10 lawyer," right?

11 A. My recollection was that Wanda said, "Okay."  
12 She smirked and said, "You'll hear from my  
13 lawyer."

14 Q. Would you agree with me that's not  
15 consistent with what Mr. Zurick wrote here?

16 A. It's fairly consistent.

17 Q. She says her lawyer would be reviewing the  
18 release agreement, not "You'll be hearing from  
19 my lawyer," but that "My lawyer will be  
20 reviewing the release agreement." Okay?

21 A. I still think it's fairly consistent.

22 THE COURT: Counsel, we're going to  
23 take our afternoon break now. We'll be in  
24 recess for 15 minutes.

25 Members of the jury, please do not talk

1 about the case among yourselves or with others.

2 Enjoy your afternoon break.

3 You're excused.

4 Sir, let me give you some caution.

5 You're under cross-examination, and you're not  
6 to have any discussions with your counsel in  
7 reference to your testimony while you're under  
8 cross-examination.

9 MR. BANKS: Yes, I understand, Your  
10 Honor. I was just looking --

11 THE COURT: I'm not saying you didn't  
12 understand. I'm just giving the witness an  
13 instruction.

14 Enjoy your break.

15 (Recess was held at 3:00 p.m.)

16 (The Court resumed the proceedings at  
17 3:20 p.m., at which time the jury entered the  
18 courtroom.)

19 BY MR. SALMANSON:

20 Q. Mr. McCool, are you aware that after an  
21 employee is terminated, an employee's  
22 termination request has to be processed through  
23 Capmark system, correct?

24 A. Yes.

25 Q. If you would turn to P-85, please.

1 A. Okay.

2 Q. Do you recognize this type of document,  
3 generally?

4 A. I think I only recognize it from my  
5 deposition.

6 Q. All right. It shows you as the originator  
7 of this document, correct? If you look on the  
8 second page.

9 A. Yes.

10 Q. It says "Originator, Mark McCool. Completed  
11 by Mark McCool," correct?

12 A. Correct.

13 Q. And then it was approved by Mr. Zurick,  
14 right?

15 A. Correct.

16 Q. And on this form that, according to this,  
17 was originated and completed by you, the reason  
18 for termination given is "5200 Discharge Other."

19 Do you see that?

20 A. I do.

21 Q. Now, there are lots of other codes you could  
22 have used, right?

23 A. Yes. I would assume. I don't know the  
24 form.

25 Q. Do you know that one potential code is

1 insubordination?

2 A. No.

3 Q. Do you know how you came about to approve  
4 the code of "5200 Discharge Other"?

5 A. I don't know that I did.

6 Q. Are you saying that this form is inaccurate,  
7 that it was completed by you?

8 A. I testified in my deposition, I had never  
9 seen the form before.

10 Q. Well, do you recall whether you had seen the  
11 form before, whether you provided some of the  
12 information that was needed to complete the  
13 form?

14 A. I don't believe I did.

15 Q. So you don't have any idea how this form  
16 came about?

17 A. I know within our Human Resource system  
18 there's forms. I assume that this is one of  
19 them.

20 Q. Do you recall anyone from Human Resources  
21 asking you what the reason for the discharge  
22 should be recorded as?

23 A. No.

24 Q. Did you have any discussions with anyone in  
25 Human Resources about the reasons for

1 Ms. Speight's termination, either -- you know, I  
2 had asked you prior to the termination and you  
3 said no --

4 A. Yeah.

5 Q. -- but afterwards, did you have any  
6 discussions after the termination decision was  
7 made?

8 A. No.

9 Q. Now, is it fair to say that, in your view,  
10 you did not agree with Ms. Speight's management  
11 style?

12 A. I don't think it was about management style.

13 Q. Would you agree that it was the way in which  
14 she was accepting or failing to accept the  
15 responsibilities for her department?

16 A. Do I agree that -- what are you asking me to  
17 agree with?

18 Q. Let me withdraw that question.

19 Do you recall an employee named Bryan  
20 Pollack?

21 A. Yes.

22 Q. Bryan Pollack is white, right?

23 A. He is.

24 Q. And you had to approve Mr. Pollack's  
25 termination, right?

1 A. Well, yeah. I guess I did, or recommend it.

2 Q. He was a manager?

3 A. He would probably say he was a manager,  
4 yeah.

5 Q. He was supposed to be a manager?

6 A. He was a lower-level employee.

7 Q. And do you recall that there came a time  
8 when you were not happy with the way Mr. Pollack  
9 was managing?

10 A. Yes. I recall, yes.

11 Q. And do you recall that part of the problem  
12 was that you thought that Mr. Pollack was  
13 affecting the morale of his group?

14 A. Well, my recollection is that the way he was  
15 managing that group was called into question.

16 Q. And, in fact, you reported to Human  
17 Resources that, based on your expectations,  
18 Mr. Pollack was not where he should be in terms  
19 of performance and staff development?

20 A. Okay.

21 Q. Is that consistent with your recollection?

22 A. It is consistent, yes.

23 Q. Now, if you were having these ongoing  
24 concerns up until the termination of  
25 Ms. Speight, do you agree that you were having

1 similar types of concerns in terms of  
2 performance and staff development up until, not  
3 including, the May 25th e-mail?

4 A. That I would have the same concerns with  
5 Ms. Speight?

6 Q. Yes.

7 A. Yes. I was beginning to -- yes, I was  
8 having those concerns.

9 Q. Okay. Now, in Mr. Pollack's case, you gave  
10 him a warning, right?

11 A. I believe he was given a warning.

12 Q. You yellow-flagged him, right? I love that  
13 analogy. I don't know. I just came up with it  
14 today. I remembered that you played soccer.

15 You yellow-flagged Mr. Pollak, right?

16 A. I know he was given a warning. So, yes. He  
17 wasn't one of my direct reports.

18 Q. If you look at P-110 --

19 A. Uh-huh.

20 Q. -- the date of the internal e-mails begins  
21 on January 9th.

22 Then the second page is a memo  
23 documented by John Zurick, dated January 31st,  
24 2006, saying you and Tony Perez and Mr. Zurick  
25 "met with Bryan on January 31st to inform Bryan



1 the concerns of Bryan's staff that were brought  
2 to Mark's attention. Mark also wanted to tell  
3 Bryan what he expected of him in regard to the  
4 way he was managing his staff." Right?

5 A. I'm just trying to find out where you are.

6 Q. I'm sorry. I'm right at the top of the  
7 second page.

8 A. Okay, thank you.

9 Q. Do you see where I am?

10 A. I do, yes.

11 Q. I apologize for that.

12 And you informed Bryan that you weren't  
13 seeing Bryan progress the way he should have  
14 been. Based on his skills and experience. Mark  
15 and Ned had certain expectations from Bryan when  
16 they hired him nine months ago, and Bryan was  
17 not meeting those expectations," correct?

18 A. Okay.

19 Q. Is that your recollection of the way it  
20 happened?

21 A. Yeah. Generally, yes.

22 Q. And if a manager isn't meeting someone's  
23 expectations, you're generally supposed to have  
24 this kind of counseling session, right?

25 A. Yes.

1 Q. And you didn't have the opportunity to have  
2 that kind of counseling session with  
3 Ms. Speight, right?

4 A. No, I did not have the opportunity.

5 Q. Okay. In fact, going back to Mr. Pollack,  
6 you told him that he had 30 days to improve? I  
7 don't know if it says it in this memo.

8 A. I don't recall. I know that he was given a  
9 time frame to improve.

10 Q. Actually, it is at the bottom. If you look  
11 at the second to last line, it says "Mark told  
12 Bryan that he had 30 days to improve the  
13 relations within his department."

14 A. Okay.

15 Q. And that, "Tony also stated he would be more  
16 involved in the day-to-day within the  
17 department." Right?

18 A. Yes.

19 Q. So Tony is going to step in with a little  
20 more day-to-day?

21 A. Correct.

22 Q. Just the way you were thinking about  
23 Ms. Speight that maybe Mr. Finkenstaedt would  
24 get more involved in the day-to-day, right?

25 A. I don't know if it's the same or not.

1 Q. Okay. In fact, you gave Mr. Pollack a lot  
2 more than 30 days, right?

3 A. I don't know.

4 Q. Well, let's turn to the next page.

5 A. That's what I figured we'd do.

6 Q. The date is April 12th. He's given 30 days  
7 on January 31st. Right?

8 A. Okay.

9 Q. It says, "Mark McCool called me and told me  
10 he wanted to terminate Bryan."

11 So his termination didn't occur and got  
12 all the month of February, all the month of  
13 March, and part of April to improve, right?

14 A. All right. Based on this, yes.

15 Q. I believe it was Mr. Zurick's testimony  
16 yesterday that that wasn't extended because  
17 Mr. Pollack's improvement went up and then came  
18 back down, right? It sort of flat-lined all the  
19 way from January 31st to April 12th, right?

20 A. I don't know. He wasn't one of my direct  
21 reports.

22 Q. So, as you sit here today, you don't have  
23 any reason to disagree with Mr. Zurick's  
24 testimony in that regard?

25 A. No.

1 Q. Okay. Now, ultimately it would have been  
2 your decision to terminate Mr. Pollack, correct?

3 A. No, I don't believe so.

4 Q. Whose decision would it have been?

5 A. Again, I would think I would have gone to  
6 Mike Lipson.

7 Q. So Mike Lipson would have ultimately been  
8 responsible for Mr. Pollack's termination?

9 A. I believe so, yes.

10 Q. And your testimony today --

11 A. Well, I would say I think Mr. Pollack was  
12 responsible for his termination.

13 Q. Fair enough. The termination decision.

14 A. Yes. Thank you.

15 Q. And you believe that's the same as in  
16 Ms. Speight's case, that Mr. Lipson ultimately  
17 had the decision?

18 A. Yes. Mr. Lipson is the executive  
19 vice-president of the group. I think it's his  
20 responsibility.

21 Q. Okay. And if you had told Ms. Speight, I  
22 want her out, as you testified at the beginning,  
23 he would always take your recommendations,  
24 right?

25 A. He would always take my recommendations?

1 Q. Yes.

2 A. No, he's not always taken my  
3 recommendations.

4 Q. I thought you testified to that this  
5 morning.

6 Does he generally take your  
7 recommendations?

8 A. I think he relies on them, yes.

9 Q. Basically, you told him in Ms. Speight's  
10 case, I want her out, right?

11 A. I don't recall that.

12 Q. You told Ms. Speight, I'm the one  
13 who realized it wasn't going to work out, right?  
14 That's what you told her at termination.

15 MR. BANKS: Objection. He's testified  
16 to this.

17 THE COURT: Overruled, one last time.

18 BY MR. SALMANSON:

19 Q. One last time. That's what you told  
20 Ms. Speight in the meeting, right, that you had  
21 decided that it wasn't going to work out?

22 A. I communicated to Ms. Speight that she was  
23 being terminated.

24 Q. Okay. And according to the memo from  
25 Mr. Zurick, you communicated to her that she's

1 being terminated because after the May 23rd  
2 meeting and the May 26th e-mail, you realized it  
3 wasn't going to work out?

4 A. That's my recollection of the meeting.

5 MR. SALMANSON: Nothing further, Your  
6 Honor.

7 CROSS-EXAMINATION

8 BY MR. BANKS:

9 Q. Hello, Mr. McCool.

10 A. Hello.

11 Q. Long day up there.

12 A. Yes, it has been.

13 Q. Mr. McCool, did you view Mr. Pollack's  
14 situation as comparable to Ms. Speight's  
15 situation?

16 A. Not at all.

17 Q. To your knowledge, did Mr. Pollack ever act  
18 in a way that was insubordinate to you or any of  
19 his superiors?

20 A. Never.

21 Q. Did he ever tell a client, even an internal  
22 client, that they would get deficient work  
23 product if your directives were followed?

24 A. Absolutely not.

25 Q. Mr. Salmanson asked you about an e-mail that

1 was labeled D-11. I know you have a bunch of  
2 binders there. It was a May 9th, 2006 e-mail  
3 from Ms. Speight to a bunch of people, and  
4 you're copied on it, or you're one of the people  
5 that are addressed on it.

6 He spent awhile asking you about this.  
7 This e-mail appears to have been addressed to  
8 Julie Gschwind.

9 Am I pronouncing that right?

10 A. I don't know.

11 Q. It says, "Thanks for the feedback, Julie.  
12 Mark, Mike, the Credit Department will be  
13 providing training for the risk rating process.  
14 The next cycle will begin in late May. If Julie  
15 and Jackie are not the appropriate individuals,"  
16 et cetera.

17 You recall him asking you about this?

18 A. I do.

19 Q. When he asked you about this, did you  
20 understand this to be an e-mail discussing the  
21 possibility of providing training to people in  
22 the Credit Department?

23 A. The -- I'm sorry. I lost it there for a  
24 second.

25 Q. Okay. Did you understand this e-mail from

1 Ms. Speight to be suggesting that the  
2 possibility that people in the Credit Department  
3 would be trained on how to do risk ratings?

4 A. Yes.

5 MR. SALMANSON: Objection.

6 THE COURT: What's your basis for the  
7 objection?

8 MR. SALMANSON: Leading.

9 THE COURT: It is somewhat leading.  
10 I'm going to overrule your objection to this  
11 question, but I won't for the next one.

12 BY MR. BANKS:

13 Q. Did he ask you to read your response to the  
14 e-mail aloud to the jury?

15 A. Not that I recall.

16 Q. Okay. Let's read your response aloud that  
17 you gave to Ms. Speight in response to her  
18 e-mail? Now, what did you say?

19 A. "Let's talk about this tomorrow. What times  
20 are you available?"

21 Q. Did you tell Ms. Speight at any time that  
22 you agreed with her suggestion to have training  
23 given by the Credit Department on how to do risk  
24 ratings?

25 A. No.



1 Q. I'd like to turn to, for lack of a better  
2 term, the termination e-mail, the May 25th  
3 e-mail, first from you, and then from  
4 Ms. Speight. It's on the giganda blow-up over  
5 there. It's D-23 in your binder.

6 Tell me when you're there. It's the  
7 defendant's exhibits. Is that the right one?

8 A. I'll get it in a second.

9 MR. BANKS: May I help the witness,  
10 Your Honor?

11 THE WITNESS: I have it.

12 MR. BANKS: Your Honor, may I just move  
13 some of these away to clear this out a bit, give  
14 the man some space?

15 BY MR. BANKS:

16 Q. Now, first, in this e-mail trail, there was  
17 a reference to an e-mail from Mr. Nienas. It's  
18 on Page 4 of the e-mail dated May 24th.

19 Do you remember Mr. Salmanson asking  
20 you about that?

21 A. I do.

22 Q. In this e-mail, Mr. Nienas wrote to a bunch  
23 of people, "It appears from the following e-mail  
24 correspondence that Asset Management  
25 responsibilities for the Canadian portfolio have

1       been reassigned to the CRM in Canada."

2                   And then it goes on, right?

3       A.   Yes.

4       Q.   And he copied Mr. Hohenleitner on that  
5       e-mail, right?

6       A.   Yes.

7       Q.   Were you troubled that Mr. Hohenleitner  
8       would be copied on this e-mail?

9       A.   No, no. The e-mail is about training.

10      Q.   Okay. Now, let's turn back, then, to the  
11      e-mail that is on the blow-up, the first page,  
12      your e-mail, and the response from Ms. Speight.

13               I want to go through some of the things  
14      in Ms. Speight's response to you. Do you have  
15      it there?

16      A.   Yes, I do.

17      Q.   Let's go to the third paragraph, the portion  
18      that begins, "Consequently, the former PLG Asset  
19      Management individuals are not in a position to  
20      perform an evaluation for risk rating purposes."

21               Do you see that sentence?

22      A.   I do.

23      Q.   Do you recall Mr. Salmons asking you about  
24      whether you would agree that the people may not  
25      have been in a position to do those risk ratings

1 that day on May 25th?

2 A. Yes, I do.

3 Q. When were the risk ratings due?

4 A. I believe it was either June 8th or  
5 June 16th.

6 Q. Well, what, if anything, did you expect  
7 those people to be able to do, the people in  
8 Wanda Speight's group, to be in a position to do  
9 the risk ratings by June 8th or 16th?

10 A. Whatever it took.

11 Q. Give me some ideas about someone who hadn't  
12 been managing that could get up to speed to do  
13 the risk ratings? What would they do?

14 A. We have available to us a tremendous amount  
15 of information. There are financial statements  
16 that they would have access to or should have  
17 access to, and would pull down and review,  
18 spread the financial statements, pull market  
19 analyses, look at rent roles for a particular  
20 property which lists how many tenants are there.  
21 There's a myriad of things that they could do,  
22 should do.

23 Q. When you wrote your e-mail, at the bottom of  
24 this page, at the bottom of the blow-up, saying  
25 "All risk ratings will be done by the Asset

1 Management group," did you believe that people  
2 in that group had enough time to get up to speed  
3 on the Canadian loans to get the risk ratings  
4 done by June 8th or 16th?

5 A. Positively.

6 Q. The next sentence that Mr. Salmanson read to  
7 you is in the next paragraph.

8 This is Ms. Speight writing. "I would  
9 hope that I am not being told by Capmark  
10 Management to sign off on reserves and provide  
11 risk ratings on a portfolio of loans, for which  
12 my staff has no knowledge."

13 Did that statement trouble you?

14 A. Absolutely.

15 Q. Did you believe they could get knowledge?

16 A. Yeah, absolutely they could. Readily.

17 Q. Is that consistent with what you have just  
18 told us?

19 A. That's very consistent with what I just  
20 said.

21 Q. Okay. Now, let's go to the next sentence.  
22 This is the next to last sentence in  
23 Ms. Speight's e-mail.

24 I know you weren't here yesterday, at  
25 least, I don't believe you were, right?

1 A. No, I wasn't.

2 Q. Okay. Do you know that Ms. Speight  
3 testified yesterday, or do you only know because  
4 I have told you?

5 A. I understand because you told me.

6 Q. Okay. This last sentence says, "Mark,  
7 again, the Asset Management team is and will  
8 continue to be responsible for daily borrower  
9 interaction as well as the risk rating process,  
10 for its existing portfolio."

11 What did you interpret Ms. Speight to  
12 mean by that?

13 A. My interpretation was that she would  
14 continue to be responsible for risk ratings, but  
15 only for the loans that she felt her group was  
16 responsible for.

17 Q. I'm going to read to you a question and  
18 answer --

19 THE COURT: One moment.

20 MR. BANKS: I'm sorry, Your Honor.

21 MR. SALMANSON: I don't have a copy.

22 MR. BANKS: You can come and look.

23 MR. SALMANSON: That's what I was going  
24 to ask, if I could come up and look.

25 MR. BANKS: Sure. You can stand right

1 next to me, if you want.

2 MR. SALMANSON: Okay.

3 BY MR. BANKS:

4 Q. Page 159, Line 15,

5 I asked you -- actually, I take it  
6 back. Let me go back a little further. I asked  
7 Ms. Speight --

8 A. Is this in my deposition?

9 Q. No. This is from Ms. Speight's testimony  
10 yesterday. I'm going ask you if her answer is  
11 consistent with what you understood when you  
12 read that sentence.

13 A. Okay.

14 Q. "Q. What you were saying to him there,  
15 though, was, we'll do the risk ratings for our  
16 existing portfolio, meaning portfolios other  
17 than the Canadian loan portfolio, right?"

18 And she answered,

19 "A. That's correct."

20 Is that what you understood her to be  
21 saying?

22 A. Yes, it is.

23 Q. Did you understood her to be saying that she  
24 just wasn't going to be doing the Canadian  
25 portfolio?

1 A. Absolutely.

2 Q. Let's look at the next line. This is the  
3 final one, and this is the one addressed to Joe  
4 in the Credit Department.

5 She says, "Joe, please be aware if we  
6 are being told to risk rate the SPG loans and  
7 Canadian portfolio, I cannot be confident in the  
8 accuracy of assigned ratings, nor can we be  
9 expected to defend such ratings given our lack  
10 of knowledge and experience with this  
11 portfolio."

12 Did that concern you?

13 A. Absolutely.

14 Q. Why? What bothered you about that comment  
15 being addressed to Joe Hohenleitner and the  
16 others?

17 A. Well, as I discussed before, Joe, Maureen,  
18 and Beth on the e-mail are all clients, and the  
19 comment here is that she is putting them on  
20 notice that if she does what I'm telling her to  
21 do, you, Joe, won't be able to rely on this  
22 information.

23 Q. This is what I asked Ms. Speight yesterday.

24 MR. BANKS: If you want to come up  
25 again, Mr. Salmanson, feel free. It's on Page

1 162, Line 9 through Page 162, Line 12. This was  
2 my question, and this is her answer.

3 I want to know if her testimony  
4 yesterday is consistent with the way you read it  
5 in May of 2006. I asked,

6 "Q. So you were telling him if you did  
7 what McCool told you to do, he risked having  
8 inaccurate and indefensible risk ratings?"

9 Ms. Speight answered,

10 "A. That's what I told him."

11 Is that the way you interpreted it in  
12 May of 2006?

13 A. Yes.

14 Q. Why did that bother you?

15 A. Ms. Speight's department was responsible for  
16 performing this function. And for her to say  
17 that -- well, first off, the inference was that  
18 I was telling her to do something that is  
19 against -- you know, against everything that our  
20 company stands for, I think.

21 And then to say that if I do what I'm  
22 being told, everything I give you is unreliable.  
23 You can't rely on it. And, you know, the  
24 ratings that I give you are useless. From a  
25 credit perspective, I can't stress how



1 unbelievable that is.

2 Q. What was your belief, if any, as to whether  
3 Ms. Speight had the time and the resources in  
4 her group to get accurate and defensible risk  
5 ratings before they were due?

6 A. I'm very confident and comfortable that she  
7 had the resources available, and she would have  
8 gotten them done on time.

9 Q. Mr. Salmanson asked you about soccer, yellow  
10 cards and red cards. He compared her situation  
11 to Bryan Pollack who got, I think, as  
12 Mr. Salmanson described it, a 30-day yellow  
13 card?

14 A. Correct.

15 Q. You said these risk ratings were due  
16 June 8th or 16th?

17 A. That's my recollection.

18 Q. I want to tell you that Ms. Speight said  
19 yesterday that she thought it was June 8th.

20 Would you have any basis to disagree  
21 with that?

22 A. No, I wouldn't.

23 Q. So that's about 12 days after the e-mail?

24 A. Okay.

25 Q. In light of what Ms. Speight said to the

1 Credit Department about her inability to produce  
2 accurate and defensible risk ratings, did you  
3 think you had time to give her a 30-day yellow  
4 card to see how she could do?

5 A. Not at all. That's a hard date. You can't  
6 change that date at all.

7 Q. Who took over for Ms. Speight?

8 A. Don Irwin.

9 Q. And where was he before that? Where did he  
10 come from?

11 A. Don was one of Wanda's direct reports.

12 Q. So he was in the Asset Management Group?

13 A. Yes, he was.

14 Q. When did he learn that he was taking over  
15 for Ms. Speight? Did he find out before she was  
16 told of her termination or after?

17 A. No, after.

18 Q. Was it that afternoon?

19 A. Yes, I think it was that afternoon.

20 Q. So that is Friday, the day before Memorial  
21 Day, the afternoon, May 26th?

22 A. Correct.

23 Q. And Monday was a holiday?

24 A. Yes.

25 Q. So his first day back at work, after the

1 holiday, was May 30th?

2 A. Yes.

3 Q. And you said the risk ratings were due --  
4 well, if Ms. Speight is right, June 8th?

5 A. Correct, June 8th.

6 Q. Did Mr. Irwin and his group get them done on  
7 time?

8 A. They absolutely did.

9 Q. Was there any problem with the accuracy or  
10 defendability or defensibility of the risk  
11 ratings, if that's a word?

12 MR. SALMANSON: Objection, Your Honor.  
13 I think he has to lay a foundation for that.  
14 I'm not sure that Mr. McCool would have been  
15 present when the risk ratings would have been  
16 defended.

17 MR. BANKS: I'll ask it differently,  
18 Your Honor.

19 THE COURT: Very well.

20 BY MR. BANKS:

21 Q. Mr. McCool, as Mr. Irwin's immediate  
22 superior, did you ever learn of any problems  
23 with the accuracy or defensibility of the risk  
24 ratings that his group did?

25 A. Quite to the contrary.

1 Q. There was some testimony in response to  
2 Mr. Salmanson that there were discussions in  
3 late April and early May of 2006 with  
4 Ms. Speight about whether or not she would be in  
5 RES or in your group; is that right?

6 A. Correct.

7 Q. If she had been in RES, to whom would she  
8 have been reporting?

9 A. I believe it would have been Tony Lauerman.  
10 I'm sorry. Excuse me. Michael Carp.

11 Q. Would that have taken her out of her group  
12 if she went into RES?

13 A. Yes.

14 Q. What did you tell her about where you wanted  
15 her to work?

16 A. I wanted her to be part of the skill set  
17 that Wanda brought to the table, and I wanted  
18 her to continue to manage the Asset Management  
19 function, primarily responsible for client  
20 contact and borrower interaction, risk ratings,  
21 and the like. That was a better role for her in  
22 the company.

23 Q. Did you want her in your group in Asset  
24 Management reporting to you?

25 A. Absolutely.

1 Q. Was her race a factor in that? Did you want  
2 her because of her race?

3 A. No.

4 Q. Did her race cause you not to want her?

5 A. No.

6 Q. How about your reaction to the meeting on  
7 May 23rd? We talked a good bit about the  
8 meeting on May 23rd.

9 MR. BANKS: Your Honor, actually I know  
10 the jurors were read portions of Mr. McCool's  
11 memo, which was D-21.

12 I'd like to give it to him, but might I  
13 also hand copies to the jury, so they can  
14 actually see it up -- I'm addressing it to the  
15 Court.

16 THE COURT: No objections to that, is  
17 there?

18 MR. SALMANSON: Just so that we're  
19 clear, which version of the memo.

20 MR. BANKS: The final version. D-21.

21 MR. SALMANSON: Okay.

22 THE COURT: Very well. You may exhibit  
23 it to the jury.

24 BY MR. BANKS:

25 Q. Mr. McCool, if you look in your book, it's

1 exhibit D-21.

2 MR. BANKS: I'm going to hand these out  
3 to the jury, if I may.

4 BY MR. BANKS:

5 Q. Would you let me know when you have D-21?

6 A. I have it.

7 Q. Okay. Is this the final version of the memo  
8 that you wrote between the May 23rd meeting and  
9 the date of receiving Ms. Speight's May 25th  
10 e-mail?

11 A. Yes, it is.

12 Q. I'm not going to go through the entirety of  
13 this, but just in the background section, I know  
14 that Mr. Salmanson asked you some questions with  
15 that.

16 Were you attempting to document  
17 everything that had happened prior to May 23rd  
18 in that section?

19 A. No, I wasn't.

20 Q. What was the purpose of that section?

21 A. Well, to provide background.

22 Q. Was it a timeline or something else?

23 A. Yes, effectively it was a timeline.

24 Q. Okay. Now, you said, I think in response to  
25 Mr. Salmanson's questions, that the purpose of

1 this memo was to address what happened at the  
2 May 23rd meeting?

3 A. Correct, to memorialize my thoughts.

4 Q. Were things fresh in your mind when you  
5 wrote this note?

6 A. They were.

7 Q. All right. Let's skip the first couple of  
8 paragraphs that discussed the purpose of the  
9 meeting and what you were doing in reviewing the  
10 six-page document.

11 I'm going to ask you to skip to the  
12 next-to-last paragraph on the first page that  
13 begins "The Asset Management team."

14 Would you read just that paragraph and  
15 the next one aloud?

16 A. "The Asset Management team was recently  
17 advised that one of the asset managers had  
18 resigned; I inquired as to the demeanor or  
19 morale of the remainder of the team, to which  
20 Wanda responded, "You will have to ask them."

21 Q. Continue, please.

22 A. "I then asked whether Marla or anyone else  
23 had expressed concerns, Wanda replied, "Well, I  
24 don't speak for them, so you would have to ask  
25 them."

1 Q. And the first line of the next page.

2 A. "The foregoing was repeated a few more  
3 times."

4 Q. Why did you keep asking her that?

5 A. I thought it was a legitimate question.  
6 I -- frankly, I think I was shocked at the  
7 initial response, and I needed to know if there  
8 were issues within the department.

9 Q. What was your reaction to Ms. Speight  
10 saying, you go ask them instead of saying, how  
11 about if I go ask them and get back to you?

12 A. I was surprised, shocked, even.

13 Q. The next line, you wrote, "Wanda was not  
14 engaged in the conversation, nor did she  
15 willingly contribute to the discussion."

16 Can you describe a little bit what you  
17 meant by that?

18 A. The four of us were going through, again, a  
19 very granular level, trying to identify the  
20 various tasks and the placement of those tasks  
21 within Services.

22 I mean what I say. She was not  
23 engaged. Her arms were folded. She was looking  
24 around. She did not willingly contribute at  
25 all.



1 Q. Read the next sentence, please, or the next  
2 paragraph?

3 A. "When asked what her opinion was on a  
4 particular task assignment, she replied, well,  
5 you know my opinion does not count, so I don't  
6 have one."

7 Q. Did that bother you?

8 A. Yes, it did.

9 Q. Why?

10 A. I did value her opinion, and I wanted to  
11 know -- she had a -- reportedly a better  
12 understanding in that group than anybody else.  
13 Part of the transition was to insure a smooth  
14 transition. I needed her feedback.

15 Q. When you brought Ms. Speight into your  
16 group, what did you expect of her?

17 A. That she would, you know, be the senior  
18 manager that she was.

19 Q. Did you expect her to contribute ideas to  
20 the group?

21 A. Certainly.

22 Q. Would you skip down to the last paragraph.

23 A. (Witness complies.)

24 Q. The second sentence refers to the plan to  
25 schedule a meeting, and it says, "It is my

1 intention to reiterate that we believe in her  
2 abilities, which is why we offered her the  
3 position to begin with."

4 Was that sincere?

5 A. Absolutely.

6 Q. Even as of that time, did you still believe  
7 there was a potential to make it work?

8 A. Yes. I did, absolutely.

9 Q. What changed?

10 A. The e-mail on the 25th.

11 Q. Did your reaction to Ms. Speight's e-mail  
12 have anything to do with her race?

13 A. No.

14 Q. Did you ever consider her race in any of the  
15 decisions or recommendations you made about  
16 Ms. Speight, whether it's bringing her in the  
17 department, scheduling meetings, talking to her,  
18 e-mailing to her, discussing her e-mail with  
19 Mr. Lipson, or anything else?

20 A. Absolutely not.

21 Q. You were asked about some forms. I think  
22 you said they were Human Resources forms that  
23 showed you as an originator.

24 A. Yes.

25 Q. Do you actually fill out those forms?

1 A. No, I don't.

2 Q. Do you take part in the electronic process  
3 of recreating them?

4 A. No, I don't.

5 Q. Do you do that for any employees?

6 A. No.

7 Q. You've had other people in your group who  
8 have terminated employment before, I take it?

9 A. Yes, I have.

10 Q. You have never done the paperwork?

11 A. No.

12 Q. Do you know why you are shown as the  
13 originator, or do you have a belief as to why  
14 you are shown as the originator?

15 A. I believe the system works on reporting  
16 lines, and Marla was a direct report, so I would  
17 have been reflected that way.

18 Q. In the termination decision of Ms. Speight,  
19 did she ask you who actually made the decision  
20 to terminate her employment?

21 A. No.

22 Q. Did you ever volunteer who made the  
23 decision, whether it was Mr. Lipson or you or  
24 someone else?

25 A. No, I didn't.

1 MR. BANKS: May I check with  
2 co-counsel?

3 THE COURT: Yes.

4 MR. BANKS: I don't have any further  
5 questions of Mr. McCool.

6 Thank you, Judge Joyner and Mr. McCool.  
7 Mr. Salmanson may have some follow-up.

8 MR. SALMANSON: Very briefly.

9 REDIRECT EXAMINATION

10 BY MR. SALMANSON:

11 Q. If Ms. Speight, as of May 25th, had to do  
12 these risk ratings, there are a lot of resources  
13 available to her, right? There's all sorts of  
14 reports that she could have gotten her hands on,  
15 hard data, right?

16 A. Yes.

17 Q. But you didn't say that there was also a  
18 subjective element to the risk ratings, right?

19 A. No, correct, there is a subjective element.

20 Q. That's a really important part of the risk  
21 ratings, right?

22 A. It certainly is.

23 Q. And none of the reports were going to  
24 provide that subjective information, right?

25 A. No. That would have come from the expertise

1 within the group.

2 Q. And the expertise within the group, in order  
3 to make that subjective determination, they had  
4 to know what was going on in those loans, right?

5 A. And apparently they did know.

6 Q. Well, eventually, right?

7 A. They got it done on time, so they knew.

8 Q. With a whole lot of extra resources, right?

9 A. When I referred to the whole lot of  
10 resources -- you know, without going into  
11 nauseating detail, we have a lot of electronic  
12 information that's available.

13 Q. Let me try it again. Maybe I wasn't clear.

14 After May 25th, and, in fact, virtually  
15 as soon as Mr. Irwin was assigned to the task,  
16 you gave him four extra asset managers to help  
17 him finish the job, right?

18 A. No, I don't think so.

19 Q. Do you recall how many asset managers he was  
20 given to help do the job?

21 A. I identified four asset managers that would  
22 eventually move into the group.

23 Q. And did you recall how quickly they were  
24 assigned to the group?

25 A. I think they took on that role sometime in

1 July or August.

2 Q. You don't think they helped participate in  
3 the Asset Management function to get it done for  
4 the June risk ratings?

5 A. I'm pretty positive they did not.

6 Q. Now, Ms. Speight, I believe Mr. Banks  
7 testified -- he characterized -- I shouldn't say  
8 "testified," but said that Ms. Speight was  
9 saying, you know, the risk ratings are going to  
10 be, pardon my French, for crap basically, right?

11 But that's not what she said. She said  
12 she couldn't be confident in the accuracy. She  
13 didn't say they were going to be inaccurate,  
14 right?

15 A. I think that's the same thing.

16 Q. Now, Mr. Banks also talked about yellow  
17 carding. We're back to soccer.

18 He said, you didn't have time to yellow  
19 card and give her 30 days, right? But I didn't  
20 ask you about yellow carding and giving her 30  
21 days. I just asked you about yellow carding.

22 As soon as you're yellow carded, you  
23 know you're in trouble, right?

24 A. Yes, but going back to the soccer.

25 Q. She wasn't given a yellow card in one day to

1 improve or change her tune, right?

2 A. That's correct, she wasn't.

3 Q. Just so we're clear, you were told that  
4 Ms. Speight's group was moving into Servicing,  
5 right?

6 A. Yes.

7 Q. You didn't have any input on that?

8 A. No.

9 Q. At the end of the day, on May 12th, when the  
10 decision was finally made to take Ms. Speight,  
11 you weren't just taking Ms. Speight, right, you  
12 were taking Ms. Speight and all 20 of her people  
13 altogether?

14 A. I don't know how many of those employees  
15 were identified as going to Real Estate  
16 Solutions or Asset Management, so I don't know  
17 that answer.

18 Q. But at least as of May 12th, when you agreed  
19 to take Ms. Speight, you were also taking a lot  
20 of her people, too?

21 A. Yes.

22 Q. So the decision wasn't just about taking  
23 Ms. Speight, right?

24 A. The decision would have never been just  
25 about that.

1 Q. Right. So when Mr. Banks talks about, well,  
2 you agreed to have Ms. Speight come in and she  
3 was African-American, that had nothing to do  
4 with it.

5 I mean, the truth of the matter is that  
6 it was never just about Ms. Speight, where she  
7 was going to go, but it was about where she and  
8 her group were going to go, right?

9 A. Well, I think the first decision was who was  
10 the right person to manage the group, and  
11 Ms. Speight was the right person to manage the  
12 group.

13 Q. She had always managed that group, right?

14 A. Correct.

15 Q. And based on everything you knew, she was  
16 really good at it, right?

17 A. I had heard no complaints.

18 Q. As far as you knew, having Ms. Speight come  
19 over was going to lend real prestige to your  
20 group, right?

21 A. Yes. Having Ms. Speight as part of the team  
22 gave me comfort that the transition would move  
23 along very well.

24 Q. Ms. Speight and her team, right?

25 A. Certainly.



1 Q. And you understood that this was a team that  
2 basically Ms. Speight had developed from the  
3 ground up, right?

4 A. I don't know the whole history of the group  
5 itself.

6 Q. You would be happy to have Ms. Speight's  
7 group, whether Ms. Speight was part of the group  
8 or not, right?

9 A. I don't know that.

10 Q. Now, Mr. Banks also said that you were happy  
11 to have her report to you, right?

12 A. Sure.

13 Q. That was true as of May 12th, right?

14 A. Certainly.

15 Q. Within 13 days, it wasn't true anymore,  
16 right, or actually less than that?

17 By May 23rd, May 24th, was 12 days, 12  
18 days later, you didn't want her reporting  
19 directly to you anymore, right?

20 A. I don't think it was because I didn't want  
21 her reporting to me. It was that she required  
22 more oversight than I was capable of doing.

23 Q. And as a result of that, you didn't want her  
24 reporting to you, right, because she was too  
25 much for you?

1 A. No. She required more assistance than I had  
2 anticipated, so I wanted to give her that  
3 support.

4 Q. And you didn't want her reporting directly  
5 to you, then?

6 A. Well, again, I'll say it my way, again. I  
7 thought she needed more support than I was  
8 capable of doing, so to give her the correct  
9 amount of support would mean that she would  
10 report to Ned Finkenstaedt.

11 Q. It took you 14 days to figure that out,  
12 right?

13 A. Apparently.

14 Q. And that's 14 working days, right, two  
15 weekends in between? May 12th was a Friday,  
16 remember?

17 A. Okay, yes.

18 Q. So we're really talking ten days, two  
19 business weeks --

20 A. Okay.

21 Q. -- during part of which you might have been  
22 on PTO, right?

23 A. Based on the schedule, yes. I don't know if  
24 I was on PTO or not.

25 Q. Now, you say you valued her opinion, right?

1 A. Yes.

2 Q. And one of your concerns was that you  
3 weren't getting her opinion, right?

4 A. Correct.

5 Q. You certainly walked out of the May 23rd  
6 meeting, and you thought to yourself, I want her  
7 to know that I value her opinion, right?

8 A. Correct.

9 Q. The very next time she renders her opinion,  
10 it's in that e-mail, right?

11 A. I believe so.

12 Q. You didn't value her opinion at all in that  
13 e-mail, right?

14 A. I don't know if you can say I didn't value  
15 her opinion. I didn't value the way that she,  
16 you know, typed up the e-mail and sent the  
17 e-mail.

18 Q. In fact, the first time she gave you her  
19 opinion of anything, her opinion not only didn't  
20 count, but it got her fired; isn't that true?

21 A. I don't think I agree with that  
22 classification.

23 Q. Because she had rendered her opinion in some  
24 other manner between May 23rd and May 25th, to  
25 your recollection?

1 A. I think you're making a distinction that  
2 it's her opinion that got her fired, and I don't  
3 agree with you.

4 Q. Would you agree with me that this is the  
5 first time that she rendered her opinion after  
6 the May 23rd meeting, that you can recall?

7 A. That I can recall, yes. I don't know if I  
8 spoke to her on the phone in-between.

9 Q. And regardless of the manner of the way in  
10 which she rendered her opinion, she gave you her  
11 opinion and it got her fired; isn't that true?

12 A. Well, again, it was how that opinion was  
13 delivered.

14 MR. SALMANSON: I have nothing further,  
15 Your Honor.

16 MR. BANKS: Just one or two, Your  
17 Honor.

18 RECROSS-EXAMINATION

19 BY MR. BANKS:

20 Q. On this yellow card, just to go back for a  
21 moment to what Ms. Speight said yesterday, she  
22 said she told Hohenleitner if you did what --

23 MR. SALMANSON: Can you wait just a  
24 second?  
25

1 BY MR. BANKS:

2 Q. -- if you did what McCool told you to do,  
3 he, Hohenleitner, risked having inaccurate and  
4 indefensible risk ratings?

5 If Ms. Speight had stayed in the job,  
6 rather than being terminated, who would have had  
7 to sign off on the risk ratings for the Canadian  
8 loan portfolio?

9 A. Ms. Speight would have.

10 Q. Okay. Did you feel comfortable, after she  
11 had delivered that message to the client,  
12 keeping her in the position with the yellow card  
13 to be the one to sign off on the client's risk  
14 ratings?

15 A. I think it's very clear that she did not  
16 think she could get it done at all, so I had no  
17 confidence that she could have gotten it done.

18 MR. BANKS: Nothing further. Thank  
19 you.

20 THE COURT: Very well. Who is your  
21 next witness, just out of curiosity?

22 MR. SALMANSON: I think they would like  
23 it to be -- we're willing to accommodate them.  
24 I think it's going to be Mr. Lipson, who is  
25 going to be for awhile, so I don't know if you

1 want to get started with him, or not.

2 THE COURT: You may step down now, sir,  
3 and watch your step.

4 THE WITNESS: Thank you.

5 Ladies and gentlemen, we're going to  
6 adjourn for the day. We'll pick up tomorrow  
7 morning at 9:30.

8 Please do not talk about the case among  
9 yourselves or with others.

10 You can just leave those in your seat.  
11 Counsel will collect those at the end of the  
12 day.

13 Have a nice day. See you tomorrow  
14 morning at 9:30. Thank you.

15 (The jury exited the courtroom at  
16 4:03 p.m., at which time the Court adjourned the  
17 proceedings.)

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ROBERT JONES				
By Mr. Goldshaw	2		24	
By Mr. Banks		13		25
MARK McCOOL				
By Mr. Salmanson	39		230	
By Mr. Banks		230		260

C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of the proceedings in the  
above-entitled matter.

DATE \_\_\_\_\_  
Gregg B. Wolfe, R.P.R., C.M.